UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 01-4319-CIV-KING/O'SULLIVAN

SYLVIA ALLEN, etc.,

Plaintiff,

vs.

R.J. REYNOLDS TOBACCO COMPANY, and PHILIP MORRIS, INC.,

Defendants.

201 South Biscayne Blvd.
Miami, Florida
December 9, 2002
1:25 p.m. to 6 p.m.

Deposition of DR. JORGE ANTUNEZ de MAYOLO

Taken before Victor Selvaggi, Jr., Certified Shorthand Reporter and Notary Public in and for the State of Florida at Large, pursuant to Notice of Taking Deposition filed in the above cause.

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APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

LAW OFFICES OF GROSSMAN & ROTH
925 South Federal Highway
Boca Raton, Florida 33432
BY: Andrew B. Yaffa, Esq.

ON BEHALF OF THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY

LAW OFFICES OF CARLTON, FIELDS
100 Southeast 2nd Street
Miami, Florida 33131
BY: Amy E. Furness, Esq.

ON BEHALF OF THE DEFENDANT PHILIP MORRIS, INC.

SHOOK, HARDY & BACON
201 South Biscayne Boulevard
Miami, Florida 33131
BY: William P. Geraghty, Esq.
Gonzalo Barr, Esq.
Avier L. Gaitan, Esq.

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I N D E X

E X H I B I T S

Thereupon:

DR. JORGE ANTUNEZ de MAYOLO,

was called as a witness by the Plaintiff, and after being first duly sworn, was examined and testified under oath as follows:

DIRECT EXAMINATION

BY MR. YAFFA:

Q Doctor, good afternoon.

A Good afternoon.

Q You and I just met for the first time, correct?

A Yes.

Q Again, my name is Andrew Yaffa. I'm one of the lawyers representing the estate of Robert Allen.

Do you understand that?

A Yes.

Q Your name, as listed on your CV, is Jorge Antunez de Mayolo.

A Antunez de Mayolo.

Q Tell me how you want me to refer to you.

A Dr. Antunez.

Q I'll do my best. If I call you Dr. Mayolo by accident it's because I've been looking

at that name throughout the case.

If I ask you a question today that doesn't make sense or isn't clear, please tell me to rephrase the question. I want to be real clear with you that you and I are understanding each other. Okay?

A Sure.

Q If you need a break at any time to look

at some records, to use the rest room or speak with the lawyers, you simply let me know. I want you to be comfortable.

A Thank you.

Q I don't anticipate we will be here very long, but a lot will depend on what you have to say and what your responses are.

You understand that?

A Yes.

Q Please give your full name and address for the record.

A My name is Jorge Antunez de Mayolo. A-n-t-u-n-e-z d-e M-a-y-o-l-o.

My address is [DELETED], [DELETED].

Q And is there a medical practice located at that address?

A Yes.

Q And can you please give me the official name of that medical practice?

A Oncology and Radiation Associates.

Q Does anybody else practice radiation and oncology other than yourself?

A Yes.

Q Who else practices these specialties?

A Dr. Luis Villa, V-i-l-l-a. Dr. Antonio Ucar, U-c-a-r.

Q Have you discussed this case with Dr. Ucar or Dr. Villa?

A No.

Q Can you please give me a short synopsis of your clinical practice?

A I'm a board certified hematologist oncologist, as well as board certified internist and geriatrician.

I've been practicing with Oncology and Radiation Associates for 12 years.

I graduated from the medical school at Cayetano Heridia, C-a-y-e-t-a-n-o H-e-r-i-d-i-a, in Lima, Peru in 1983. After which, I did an Osler clerkship, O-s-l-e-r, internship at Johns Hopkins University. After which, I was accepted

as an intern and resident at the University of Miami program at Jackson Memorial Hospital.

I did my training in internal medicine there, followed by my training in hematology and oncology. Following which, I was accepted as a visiting associate at the National Institute of Health in Bethesda, Maryland, at the National Heart, Lung and Blood Institute. I stayed there until 1992. After which, I came to join the practice of Oncology and Radiation Associates.

The discrepancy of two years is because I actually practiced part-time between Bethesda and Miami.

Q What was your specialty when you practiced?

A Oncology.

Q You indicated that you did an Osler clerkship.

A Yes.

Q What is that?

A It's actually a medical school program that Johns Hopkins University Medical School set for fourth year medical students. Even though I was a graduated physician, I was accepted to participate in that. What it does is it brings

you up to par, in a manner of speaking, with American medical students.

Q And why do you need to be brought up to par with American medical students?

A More than anything, to get familiarity during the time before your residency with the difference in the practices in hospitals more than the practice in medicine.

Likewise, the language ability was enormous during that time. To me it was a tremendous experience, both for the hospital practice, it's a different country, it's a different hospital environment.

Medicine-wise, I actually feel very comfortable with my medical training and it showed

on my performance in the hospital.

Q You were trained in another country, correct?

A Yes.

Q And where were you trained?

A I finished medical school in Peru.

Q I know in many foreign medical studies it incorporates both the high school, the college and the medical school education into a combined unit.

A Yes.

Q Did you attend such a similar situation?

A No.

Q All right. Describe for me, did you go to actually three years of high school?

A I went -- the high school in my country finishes at what would be the 11th grade. After that, you do what is equivalent two years of college within the same medical school, and then you do six years of medical school, which adds up to eight years of higher education.

Q Here in the United States it would have been the high school education through 12th grade, four years of college and four years of medical school.

A Correct.

Q Plus any additional training you want to go on to.

A Yes.

Q In your country, it was three years of high school, stopping in the 11th grade, two years of college, plus four years of medical school, correct?

A No. I said you finish in what's equivalent, as far as age goes, in the 11th

grade. Then you do two years of college, then you do six years of medical school.

Q That was my mistake.

Did you go on, after finishing your six years of medical school, to do any additional training in any area of residency or internship?

A You mean in Peru?

Q In Peru.

A No.

Q In Peru, once you graduated from medical school, what year was that?

A 1983.

Q In 1983, did you practice medicine in Peru for any period of time?

A Yes.

Q Okay. For how long?

A Can I --

Q Please.

A -- just get my thoughts together for a minute?

Q Sure.

A Actually, no. Not in 1983.

Q When did you graduate?

A In 1983.

Q What did you do immediately upon

graduating?

A I completed my thesis for graduation.

Q That thesis was on what?

A My thesis was on mortality due to typhoid fever in children.

Q Okay. And at what point did you first begin to work as a physician after graduation in 1983?

A Between the time I went to Johns Hopkins in Baltimore and the time I started my internship in the United States, I had a five month interval, during which I went back to Lima and I was hired as a physician.

Q Practicing any particular specialty in Lima?

A No, general practice.

Q Okay.

A It was in Lima. I was working for an American company in the northern part of the country.

Q What was the name of the company?

A Occidental Petroleum Company.

Q Now, did you apply to any medical

schools in the United States?

A No.

Q You indicated that you came to the current practice where you have been for the last 12 years. Is that right?

A Yes.

Q And you told me that it's broken down, your specialty is broken down into hematology, oncology, internal medicine and geriatrics.

A Yes.

Q Has your practice been broken down in those specialities for the last 12 years?

A Can you please clarify what you mean by broken down?

Q Sure. I asked you to describe for me the specifics of your practice. You told me it was hematology and oncology.

A Uh-hum.

Q Yes?

A Yes.

Q I understand those are different areas of specialty. You told me that you were also practicing as an internist and a geriatrician. That's the word you used, correct?

A Yes. My intention when I described that was to describe different certifications that I had. My practice is truly exclusively hematology

and oncology.

Q If you were to break down 100 percent of your time as a physician today, how would you break down that 100 percent in the areas of specialty that you just laid out for me?

A One hundred percent hematology and oncology.

Q Is 100 percent of your time spent on dealing with cancer patients? Is 100 percent of your time dealing with blood disorders? Is it broken down? Is there a combination of both?

I'm trying to find out how you break down and spend your time.

A It is a difficult breaking down categorization to make. I would say that about 80 percent and probably 85 percent of the patients that I see have a cancer.

Q Eighty-five percent have a cancer.

A Yes.

Q Okay.

A Be it a solid tumor or hematologic malignancy. The remanding 15 to 20 percent that I see have a hematologic disorder.

Q Be it TTC, sickle cell?

A Yes.

Q Do you currently teach?
A Yes.
Q And is it a voluntary position or paid?
A It's a voluntary position.
Q Have you ever held a paid position in any teaching institution?
A No.
Q In regard to your teaching responsibility at the present time, tell me, how often do you teach?
A I teach once a week, first and second year medical students in the University of Miami School of Medicine.
Q Is it clinical teaching where they are following you around the hospital, or a classroom where you are actually giving a presentation or a speech on a particular topic?
A Clinical teaching.
Q When you say clinical, it means you have a bunch of students following you on rounds?
A It means I have two to four students seeing patients with me in the office.
Q All right. And currently you have students assigned to you in the office?
A Yes.

Q Okay. Have you ever published on the

topic of smoking and lung cancer?

A No.

Q Have you ever published on the topic of smoking and kidney cancer?

A No.

Q Do you believe that smoking causes cancer?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Can you please be more precise as to what kind of cancer you are referring to?

BY MR. YAFFA:

Q Do you believe that smoking causes lung cancer?

A Yes.

Q Do you believe that that's been known for many, many years?

A What do you mean by many, many years?

Q Do you believe that it's been known for the last 50 years that smoking is known to cause lung cancer?

A No.

MR. GERAGHTY: Objection to form.

BY MR. YAFFA:

Q Do you believe it's been known for the last 40 years?

A No.

Q Do you believe it's been known for the

last 30 years, that smoking causes cancer?

I could do it this way or ask you for how many years do you believe it's been well known that smoking causes cancer.

A Are you asking me a question?

Q Yes.

A What is the question?

Q For how many years have you known smoking causes lung cancer?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: For about 25 to -- 25 years.

BY MR. YAFFA:

Q Twenty-five years. Did you know in 1983 when you graduated medical school that smoking caused lung cancer?

A Yes.

Q Was that taught to you in medical school?

A Yes.

Q Did you know in 1983 when you graduated medical school, that there was a statistical link between smoking and kidney cancer?

MR. GERAGHTY: Objection to the form.

THE WITNESS: No.

BY MR. YAFFA:

Q Do you believe there is a statistical link between smoking and kidney cancer?

A No.

Q Do you believe that there is any increased risk to a smoker to develop kidney cancer?

MR. GERAGHTY: Objection to the form.

THE WITNESS: What kind of kidney cancer do you mean?

BY MR. YAFFA:

Q How about clear cell carcinoma?

A Clear cell, no.

Q Do you believe there is a statistical increased risk for any type of kidney cancer for a smoker?

MR. GERAGHTY: Objection to form.

THE WITNESS: For renal pelvis carcinoma, urothelial, u-r-o-t-h-e-l-i-a-l.

MR. GERAGHTY: Just for purposes of the

record, Doctor, I may at various moments interpose an objection to the form of Mr. Yaffa's question, and just so I'm not cutting you off or making the record choppy and preventing the deposition from running smoothly, if you could just pause a moment or two after his question so I have the opportunity to do that so I'm not talking over you, because it's difficult for the Court Reporter to take us down at the same time.

THE WITNESS: Sure.

BY MR. YAFFA:

Q Okay. You do recognize that there is a statistical link there is an increased risk for smokers to develop certain types of kidney cancer?

A Yes, sir.

Q How long have you known that?

A For the past 14 years.

Q In regard to testimony such as this, which you are giving in this case, have you ever given a deposition before?

A Yes, sir.

Q In what context have you given depositions?

A Medical malpractice cases.

Q In regard to the medical malpractice

cases, for how many years have you been providing testimony?

A Eight or nine years.

Q And approximately how many times a year do you get involved in the malpractice setting?

A Two to four times a year.

Q And in regard to the two to four times a year that you get involved, are you telling me that you actually give a deposition two to four times a year and have been doing so for the last eight years?

A No.

Q How many depositions do you think you have given for the last eight years you have been doing this kind of work?

A Less than one per year.

Q In regard to the medical malpractice work that you have done, can you give me a breakdown as to the percentage that you actually got involved on behalf of the injured patient versus defending the doctor or hospital?

A 50/50.

Q 50/50?

A Yes.

Q Have you actually given testimony on

behalf of a plaintiff before?

A Yes.

Q Have you ever testified on the topic of tobacco and cancer?

A No.

Q Have you ever been asked to testify in behalf of the tobacco industry regarding tobacco and cancer?

A No. Prior to this time?

Q Prior to this case.

A No.

Q Can you tell me how it is, if you know, that these law firms, and I don't know who retained you, Shook, Hardy or one of the other law

firms.

A Shook, Hardy and Bacon.

Q You understand Shook, Hardy and Bacon is defending a company called Philip Morris?

A Yes.

Q These other law firms are representing R.J. Reynolds?

A Yes.

Q You understand these companies have been producing cigarettes for many, many years in the United States and elsewhere?

A Yes.

Q Do you know how it is these lawyers defending the tobacco industry came to arrive here to get you to testify on their behalf?

A No, I don't.

Q Do you know whether or not your name was given to them by somebody?

A No, I don't.

Q All right. You told me that you believe that you have known for the last 25 years and were taught in medical school that cigarettes cause lung cancer, correct?

A Yes.

Q Prior to sitting down here today, have you been provided with any documentation at all regarding the tobacco industry's internal

documents regarding what they knew and when they knew it?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: No.

BY MR. YAFFA:

Q Do you have any information, as you sit here right now, from any source regarding what the tobacco industry knew and for how many years they

have known it?

A What do you mean by knew or known it?

Q As you sit here today, you told me you've known since at least 1983 because you were taught in medical school that cigarettes cause lung cancer.

A Yes.

Q Has anybody advised you that the tobacco industry, Shook, Hardy and the firm they represent, Philip Morris, these other law firms, R.J. Reynolds, they have known for at least 50 years that cigarettes cause lung cancer? Did you know that?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: No.

MS. FURNESS: Same objection.

BY MR. YAFFA:

Q Have you seen any documentation at all,

or did anybody advise you that they knew for at least 50 years, both through statistical evidence that existed, as well as doing examinations and experiments in their own labs, with animal, goats, pigs, monkeys, gerbils, golden hamsters, fish, rats, that their product causes cancer?

MR. GERAGHTY: Same objection.

THE WITNESS: No.

BY MR. YAFFA:

Q Has anybody advised you that for the last 50 years, while they had this information directly linking their product to cancer, that they represented to the public that their product does not cause any human disease?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: No.

MS. FURNESS: Before you go on, just so that I'm not constantly saying objection when counsel for --

MR. YAFFA: One is good for all.

MS. FURNESS: Exactly. Just so that is on the record.

MR. GERAGHTY: I appreciate that.

BY MR. YAFFA:

Q Okay. You certainly recognize their products, Philip Morris' products and R.J.

Reynolds' causes human disease.

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: What do you mean by human

disease, sir?

BY MR. YAFFA:

Q Lung cancer?

A Yes.

Q Some kidney cancers?

A Yes.

Q What other cancers do you know of as an oncologist that tobacco, cigarettes are known to cause?

A Head and neck cancers.

Q How many years have you known that cigarettes cause head and neck cancers?

A Twenty-five years.

Q Okay. What other cancers do you know as an oncologist that cigarettes cause?

A Bladder cancer.

Q How many years have you known that there is a relationship between bladder cancer and cigarettes?

A Twenty-five years.

Q Okay. Any other cancer that you are aware of as an oncologist that tobacco is known to cause?

A No.

Q Now, do you consider yourself to be a

patient's advocate?

A Yes.

Q When you have a patient that comes in and asks your advice regarding smoking, what advice do you give them?

A They have to stop smoking and --

Q And why is that?

A Because it not only can cause certain types of cancer, but it also is linked to other medical problems.

Q Such as?

A Such as emphysema, chronic obstructive pulmonary disease. Increases the risk of coronary disease and may make their likelihood for infection, if they are going to be treated with immunosuppressant medication, somewhat higher.

Q So you serve as a patient's advocate. When the patient advises you or you find out the patient is smoking, you advise them, for the reasons you just gave me, to stop smoking?

A Yes.

Q Do you think that it's appropriate for the industry to hide information from the consumers?

MR. GERAGHTY: Objection to the form of

the question.

THE WITNESS: I can't give you an opinion. I cannot give you an opinion on that.

BY MR. YAFFA:

Q You can give me an opinion as an oncologist advising his or her patients regarding whether or not it's appropriate to continue or take up the habit of smoking, correct?

A Yes.

Q Now, as an oncologist, do you think it's appropriate for the cigarette industry to hide information that it knew that its product causes disease?

MR. GERAGHTY: I object to the form of the question. You are simply asking the same question you asked before.

MR. YAFFA: You can object to the form. Otherwise, if I don't ask you for anything else, it's form.

MR. GERAGHTY: Form. I object to the form of the question.

MR. YAFFA: Thank you.

MR. GERAGHTY: Asked and answered.

MR. YAFFA: Thank you.

THE WITNESS: I already answered. I

really could not give you an opinion regarding business practice.

BY MR. YAFFA:

Q I'm not asking you that. I'm asking you whether it's appropriate to withhold information from the public.

MR. GERAGHTY: Object to the form of the question. I think you are getting to the point where you are badgering the witness by re-asking a question which he already answered.

MR. YAFFA: You are tap dancing around business practice and we are not talking about that. We are talking about lying to the public. That's exactly what they did for 50 years. You're comfortable going ahead and representing them, that's fine.

MR. GERAGHTY: If you continue to ask the same question over and over, despite his answers --

MR. YAFFA: Well, you can go in front of Judge King.

MR. GERAGHTY: Well, I'm not instructing him not to answer. I'm pointing out for the record you asked the same question three times because you are trying to badger him to say

something.

BY MR. YAFFA:

Q Do you think I'm badgering you?

A Is this a question that's going on the record?

Q Yes.

A You are asking me three times the same question.

Q Do you think I'm badgering you? Am I sitting here in a calm voice? Am I doing anything to threaten you or intimidate you?

A No, you are not.

Q Now, Doctor, as an oncologist, do you want your patients to have the benefit of all information that's out there before they engage in an activity that might potentially hurt them?

A Yes.

Q Would you, as an oncologist, withhold information from your patients?

A No.

Q Do you think that your patients are entitled to know everything about a product, assuming they are going to put it in their mouth and inhale it into their lung?

MR. GERAGHTY: Objection to the form of

the question.

THE WITNESS: I could not answer that question. You have me confused, really.

BY MR. YAFFA:

Q Do you think your patients, each and

every one of them, are entitled to all the information about what it is they are going to put in their mouth and inhale into their lungs?

MR. GERAGHTY: Same objection.

THE WITNESS: Yes.

BY MR. YAFFA:

Q Do you think your patients are entitled to know that the cigarette smoke that's being sold by these companies has been known to cause cancer for the last 50 years?

MR. GERAGHTY: Same objection.

THE WITNESS: I don't know if the patients -- if it's my position with my patients to dictate whether they are entitled to know or not with a third party, which is not me.

BY MR. YAFFA:

Q I just asked you a different question.

Do you think your patients are entitled to know that information?

MR. GERAGHTY: Same objection.

THE WITNESS: I'm going to give you the same answer. I don't think it is my position to tell my patients what they are entitled to know or not from a third party.

BY MR. YAFFA:

Q Do you smoke?

A No.

Q Have you ever smoked?
A Yes.
Q When did you smoke?
A I smoked between ages 20 -- I'm sorry. I would say 19 and 24.
Q Nineteen and 24.
A Yes.
Q What brand did you smoke?
A I forget. It was in Peru.
Q Was Philip Morris selling products in Peru?
A I don't know.
Q Was R.J. Reynolds?
A I don't know.
Q Why did you stop?
A I stopped actually when I came to Johns Hopkins. Nobody smoked in the hospital. My involvement in the hospital was very deep and I

couldn't smoke, so I decided to quit.
Q Do you believe that smoking is addictive?
A I am not an expert in addiction. I cannot tell you.
Q I know you are not an expert in that area, but as a physician, you certainly have contact with patients day in and day out that smoke who you advise not to.
A Yes.

Q Have you had patients over the course of your career that have had difficulty quitting?

A Very few.

Q Have you had patients that do, in fact, have difficulty quitting?

A Yes.

Q In those patients that have had difficulty, what have you done as an internist in helping them breaking the habit?

A Refer them to a pulmonologist.

Q Why do you do that as opposed to handling it yourself as an internist?

A Because I would ask him to handle any medical therapy for that, if he needs to do that.

Q Are you aware as an internist, as you

sit here today, who practices a subspecialty of hematology and oncology, what modalities are out there to help you and your patients stop smoking?

A Yes.

Q What?

A You can use nicotine patches. You can use Zyban. That decreases the craving for smoking. You can use acupuncture, hypnotherapy, psychotherapy. You can also just quit. However, the first step is that you want to quit.

Q Do you have an opinion, as you sit here today, as to whether or not smoking is addictive?

MR. GERAGHTY: Objection, asked and answered.

THE WITNESS: As a matter of fact, no.

BY MR. YAFFA:

Q No, you don't have an opinion?

A No, I don't have an opinion.

Q Are you aware, as you sit here today, that the company, Philip Morris, who's retained the law firm that, in turn, retained your services, has taken the public position that their product is, in fact, addictive, as the term is commonly used?

A I am not aware of that.

Q Have you seen this blue document that was put out in papers some three or four weeks ago?

A No.

Q It's a Philip Morris publication and it's got a specific section regarding addiction.

You haven't seen this?

A No.

Q Did you know that Philip Morris supports the statement that the overwhelming medical and scientific consensus is that cigarette smoking is addictive?

A No. Can I see the document?

Q Sure. In fact, we can mark it as an exhibit. We will mark it as Exhibit Number 1 to

your deposition.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 1 for Identification.)

MS. FURNESS: Off the record.

(Discussion off the record.)

THE WITNESS: Thank you.

BY MR. YAFFA:

Q Do you want to see more?

A No. Can I see just the web site so I can go there?

Thank you.

Q It actually has a lot of other links that you can go to which will take you to some of the other documents that they refer to in here.

So again, Philip Morris says "we agree with the overwhelming medical and scientific consensus that cigarette smoking is addictive."

Do you agree with that statement?

A I cannot agree with that statement as flatly as is stated.

Q Did you know prior to me reading you that, that the medical consensus was that cigarette smoking was addictive?

A I don't agree with that.

Q Do you know whether or not nicotine is a

drug?

A Can you please define what you mean by drug?

Q Use drug in the routine way in which you normally do in your course of practice.

How do you define drug?

A I give chemotherapy which are drugs. You open the paper and you read cocaine is a drug.

Q It is a drug.

A What do you mean by drug?

Q Do you think cocaine is a drug?

A Yes.

Q Do you think heroin is a drug?

A Yes.

Q Is cocaine addictive?

A Yes.

Q Is heroin addictive?

A Yes.

Q Do they have withdrawal symptoms?

A Yes.

Q Does nicotine have withdrawal symptoms?

A Yes.

Q Do you believe that 80 percent of people who smoke cigarettes actually smoke every day?

A Yes.

Q Do you agree that nearly two-thirds of smokers have their first cigarette within the first half hour after they wake up?

A I cannot tell you about that.

Q Have you seen studies where up to 85 percent of those individuals who smoke a pack or more a day have unsuccessfully been able to reduce the number of cigarettes they smoke?

MR. GERAGHTY: Objection to the form.

THE WITNESS: I don't know.

BY MR. YAFFA:

Q Have you seen any studies at all regarding people attempting to quit smoking?

A No.

Q Do you agree that a smoker who makes a serious attempt to stop smoking has a less than five percent chance of being off cigarettes a year later?

A I don't concur with that.

Q You don't concur with that?

A No.

Q Even though it's represented here in the document?

A I would have to look at the hard data.

Q Do you know what the Food and Drug Administration is?

A Yes.

Q What do they do? What are they responsible for?

A They are responsible supervising the

production and the marketing of drugs and food in the United States.

Q Did you know that Philip Morris and R.J.

Reynolds for many, many years refused to acknowledge nicotine as a drug outside of their walls for fear that the FDA would come in and control their product?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: No.

BY MR. YAFFA:

Q You haven't seen any documents regarding that?

A No.

Q Do you agree that each year in the United States 15 million people try to quit smoking, but less than three percent have long-term success?

A I would like to look at the studies. I cannot have an opinion without looking at them.

Q You don't have an opinion without looking at the studies?

A No.

Q Do you think the FDA is an authoritative source regarding addiction?

A No.

Q Do you think the National Cancer Institute is an authority on addiction?

A Who in the National Cancer Institute?
Q Have you seen the statements that they put out as an institute?
A Yes.
Q What position do they take regarding nicotine and addiction?
A The position that the NCI takes is that it's addictive.
Q Do you have any reason to disagree with that, as you sit here today?
A No.
Q What position does the NCI take in regard to tobacco and whether or not it causes cancer?
A The NCI takes the position that tobacco causes -- is a cause of many cancers and tobacco use should decrease in the United States.
Q Do you have any information at all about the companies that retained your services in this case that manipulated the levels of nicotine over the course of the last 50 years to keep some people smoking?
MR. GERAGHTY: Objection to the form of the question.
THE WITNESS: No.

BY MR. YAFFA:

Q You have no information about that?

A No.

Q Do you agree that 50 percent of all smokers will essentially succumb to a smoking related illness?

A I could not agree with that without looking at the data.

Q Are you aware of any statistics right now regarding the number of deaths in the United States related to smoking?

You have to be as an oncologist practicing in today's society. Let me reask that question.

Do you have any reason to dispute that over 400,000 people per year die in the United States alone related to smoking?

MR. GERAGHTY: Objection to form. I'll object to counsel telling the witness things that counsel believes he ought to know.

BY MR. YAFFA:

Q All right. Are you going to tell me you are not aware of these statistics?

A I haven't tried to answer yet.

Q Go ahead.

A I'm aware of those.

Q Now, do you have any reason to dispute that over 400 to 450,000 people per year in the United States alone die as a direct result of smoking related illnesses?

MR. GERAGHTY: Object to the form.

THE WITNESS: I really do have reason to dispute the term direct.

BY MR. YAFFA:

Q Explain to me the distinction that you are trying to draw.

A Within those 400,000 people that die, more than half of them, actually far more than half of them, will die of cardiovascular disease. Smoking is not the single factor. Smoking can be associated, can modulate, can worsen those diseases, but when you use the term direct, you imply that's the causative factor in death. I cannot take that blanket statement.

Q Well, I'm not telling you that 450,000 people die across the United States across the board. I'm talking about related to smoke.

Do you disagree with that?

MR. GERAGHTY: Same objection.

BY MR. YAFFA:

Q Do you believe smoking causes or contributes -- it's a better question for you.

Do you believe that smoking causes or

contributes to at least 400,000 deaths per year in the United States?

A Yes.

MR. GERAGHTY: Objection to the form of that question.

BY MR. YAFFA:

Q How many years do you believe that's been the case?

A I don't know.

Q Can we agree it's been for the last 10 years?

A No.

Q How long do you believe that's been the case?

A I could not tell you regarding the 400,000. The 400,000 is a variable number of people that has been changing year by year.

Q Do you think that we have a lung cancer epidemic here in the United States?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Yes.

BY MR. YAFFA:

Q I imagine, and, again, I'm assuming that you routinely, as part and parcel of your practice as being a hematologist and oncologist here in Dade County, Florida, read various medical journals that come out.

A Yes.

Q Have you seen many, many articles coming out which document that there is, in fact, an epidemic of lung cancer here in the United States?

A Yes.

Q Have you seen reference that there is a lung cancer epidemic worldwide?

A No.

Q As you sit here today, do you have any information at all about the warnings that Philip Morris puts out on its products in various locations?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: No.

BY MR. YAFFA:

Q Did you know that Philip Morris for many years put warnings on the labels outside of this country regarding its products being addictive?

A No.

Q Did you know that while Philip Morris was putting product warnings on the labels that the product was addictive outside of the country, they refused to put that same warning on the labels here in the United States?

A I'm not aware of it.

Q You are not. Do you know Dr. Sridhar?

A I knew.

Q As I understand it, he died as a result of cancer. What form of cancer, I don't know. Do you?

A Do I know what kind of cancer he died of?

Q Yes.

A Lymphoma.

Q Did you participate in his care?

A No.

Q Did you ever talk to Dr. Sridhar about this case?

A No.

Q Did you think that Dr. Sridhar was a quality oncologist?

A Yes.

Q Do you think that Dr. Sridhar was the type of physician who would review all the

information at his disposal before he arrived at a medical opinion?

MR. GERAGHTY: Object to the form of the question.

THE WITNESS: He may usually do that.

BY MR. YAFFA:

Q How about Tom Temple, do you know him?

A Yes, I do know him.

Q Have you ever talked to him about this case?

A No.

Q Is he a quality orthopedic oncologist?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Yes.

BY MR. YAFFA:

Q Do you think Dr. Temple is the type of oncologist who will review and evaluate all the information at his disposal before he arrives at an appropriate medical diagnosis?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: Dr. Temple would collect all the information that he has regarding the orthopedic problems that he has to deal with and will decide and act upon the orthopedic problem.

BY MR. YAFFA:

Q You have not talked to him about this case?

A No.

Q Do you have any reason to believe that he didn't do that in this case, meaning review everything about the orthopedic problem that he was evaluating prior to arriving at an appropriate diagnosis?

A No.

Q Did Dr. Sridhar arrive at a correct diagnosis in this case?

A Yes.

Q What did he say?
A Kidney cancer.
Q He arrived at that diagnosis of kidney cancer?
A Yes.
Q Tell me what your basis is that his opinion was kidney cancer.
A The last written order entry on the case is the order for interleukin that was given in August of 1999, and it was handwritten with Dr. Sridhar's handwriting. Diagnosis, kidney cancer, and the order for interleukin, which is an

appropriate treatment for metastatic treatment of cancer.
Q Any other basis for your answer that Dr. Sridhar was of the opinion that this was a primary kidney cancer?
What was the date, by the way? What was the date on that order? You said it was August.
A Yes, it was August, sir.
Q Okay. August of '99. He died, I know, in October. I did not mean to cut you off.
A I may be off. August or September.
Q No problem.
MR. GERAGHTY: Why don't you reask your question because I don't know where you are either.
BY MR. YAFFA:

Q Any other basis for you to state that it was a primary renal other -- strike that.

Any other basis for you to state that Sridhar was of the opinion it was a primary renal, other than that last written note regarding the interleukin?

A Yes.

Q What is it?

A From the first day Dr. Sridhar received

the diagnosis of clear cell carcinoma from the pathologists, he requested the appropriate studies to rule out the presence of kidney tumor. Along the course of the medical illness of Mr. Allen, while he was not responding to treatment for lung cancer that Dr. Sridhar started, he repeated the -- requested the same studies on the kidneys, trying to get from his radiologist an answer on whether this man actually had kidney cancer he suspected he had.

Q Again, that sort of comes back to Sridhar ordering studies and that last note that we talked about with the interleukin.

MR. GERAGHTY: Objection to the form of the question.

BY MR. YAFFA:

Q You are telling me that Sridhar repeatedly asked for studies.

A Dr. Sridhar, from the time on his notes where he was given the report of clear cell carcinoma of the kidney, asked directly for studies to try to identify a tumor in the kidneys, and he states in his note that that would be his main step, to confirm his suspicion that this was a kidney cancer. When he's not given that

information, he starts the patient on treatment for lung cancer.

Along the treatment, he asks again for studies to try to find if there is actually a tumor in the kidney when he sees that the patient is not responding to treatment for lung cancer, and again, he is not given that information.

Then at the end of Mr. Allen's life, when he had not responded at all to any of the treatments for lung cancer, he actually makes up his mind and decides that all through his diagnosis it was kidney cancer. He writes it down, he signs it. He orders treatment for kidney cancer.

Q So is it your testimony that Dr. Sridhar was wrong throughout the time that he was treating the lung cancer, that Mr. Allen actually had a kidney cancer?

A Yes, sir.

MR. GERAGHTY: Objection to the form of the question.

BY MR. YAFFA:

Q You think Sridhar made a mistake?

MR. GERAGHTY: Same objection.

BY MR. YAFFA:

Q I want to make sure that you and I are on exactly the same page.

You think Sridhar made a mistake.

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: I think Dr. Sridhar chose the wrong diagnosis when the information he was given regarding the state of the kidneys was not correct.

BY MR. YAFFA:

Q Okay. We'll come back and talk about that in greater detail, I'm sure.

Tom Temple, what diagnosis did he arrive at?

A I don't think that Dr. Temple arrived at a diagnosis of one thing or another. He was given a diagnosis by the pathologist and then he was given a diagnosis in the notes of -- from Marco and Sridhar after they had been told that the kidneys were normal, and he followed that same diagnosis, but at the time, Dr. Temple saw the patient first, the only diagnosis was calcaneous tumor, I'm sure cuboid bone tumor.

Q Do you know whether Dr. Temple arrived at his own diagnosis independent of what Dr.

Sridhar did?

A I don't think he did.

Q Have you talked to him to find out the answer to that question?

A No.

Q How many times do you think Dr. Temple wrote in his notes that Mr. Allen was suffering from a primary lung tumor?

A Every time he went to see him, he was seeing Dr. Allen.

Q Dr. Marco, is he a respected radiation oncologist over at the University of Miami?

A Yes.

Q Do you think he's the type of physician who will evaluate all the information at his disposal before arriving at an appropriate medical diagnosis?

A Yes.

MR. GERAGHTY: Objection to form. You have to give me a moment.

BY MR. YAFFA:

Q What diagnosis did Dr. Marco arrive at?

A Lung cancer.

Q And you think he's mistaken?

A Yes, sir.

Q You think Temple is mistaken, Sridhar is mistaken and Marco was mistaken.

MR. GERAGHTY: Objection to the form of the question. You are putting words in the witness' mouth.

BY MR. YAFFA:

Q Do you think the doctors were mistaken?

A Dr. Marco arrived at the wrong diagnosis. Dr. Temple, in my opinion, never formed his own independent diagnosis. Dr. Temple followed the diagnosis given to him by Dr. Marco and Sridhar, and Dr. Sridhar reached the wrong diagnosis when he was given the wrong information regarding the patient's kidneys.

Q Dr. Benedetto, did he evaluate the patient?

A No.

Q You didn't let me finish. What did Benedetto see or didn't see?

MR. GERAGHTY: I'm sorry. Objection to the form.

BY MR. YAFFA:

Q What did Dr. Benedetto see in regard to Mr. Allen?

A He was not involved in the care of the

patient.

Q At all?

A At all.

Q Have you seen studies at all where he reviewed medical records and expressed the opinion to Dr. Nadji, the pathologist, that he did not believe this was a primary kidney tumor, he believed it was a primary lung tumor?

A There is no note in the record from Dr. Benedetto at all.

Q Have you seen the telephone message that was contained in Dr. Nadji's records documenting that Benedetto had done something, looked at something or spoke to someone and it was his opinion that Mr. Allen was suffering from a primary lung tumor, not a primary kidney tumor?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: Was that part of the medical records?

BY MR. YAFFA:

Q I produced it at the deposition of Dr., what was his name?

MR. BARR: Adler, maybe.

BY MR. YAFFA:

Q It was also contained within the medical records of Dr. Nadji. So the answer is yes.

MR. GERAGHTY: I'll object to counsel posing questions and then answering them.

MR. YAFFA: Did he not just ask me the question?

MR. GERAGHTY: But I'm going -- my objection is preserved on the record.

MR. YAFFA: Do whatever you want.

THE WITNESS: Can I please see that?

BY MR. YAFFA:

Q I don't have the medical records. Do you have the medical records?

A Yes, I have many medical records of Mr. Allen. There is none that I have seen.

Q Did the lawyers who retained your services --

MS. FURNESS: Could you at least let him finish? You guys are moving at such a speed.

MR. GERAGHTY: You are interrupting him as much as he is.

What's the question?

BY MR. YAFFA:

Q Did the lawyers who have the records in their possession, provide you with the telephone

message documenting what Dr. Benedetto told Nadji's office?

A No.

Q Have you been advised of that prior to

my asking the question?

A Yes.

Q Have you asked to see it?

A Yes.

Q Do you know why that hasn't been provided to you?

A It was not available at that time.

Q Is it available now as we sit here right now?

A I don't know.

MR. YAFFA: Do you guys have a copy of the record to give it to him?

MR. BARR: I do not have a copy of the record. I do not have a copy of the telephone message.

MR. YAFFA: Do you have a copy of Adler's deposition with the exhibit attached? If you do, it will be attached.

MR. BARR: I may.

MS. FURNESS: Can we take a break?

MR. GERAGHTY: Do you want to ask him

questions about it?

MR. YAFFA: Yes.

MR. GERAGHTY: Then we should take a break and get the document.

MR. YAFFA: I'll wait.

(Discussion off the record.)

BY MR. YAFFA:

Q In regard to Dr. Benedetto, as we sit here right now, you don't have any information at all about what he saw, didn't see or what his opinions were. Is that right?

A As far as what I have reviewed extensively in all the medical records of Mr. Allen, Dr. Benedetto was not involved in the care of Mr. Allen.

Q Dr. Benedetto is what kind of doctor?

A Medical oncologist.

Q Do you respect him?

A Yes.

Q What about Doctors Nadji and Civantos, the pathologists, do you know them?

A Yes.

Q Have you spoken to them about this case?

A No.

Q You saw that during the course of their

involvement, they not only were involved in reviewing and interpreting the initial slides that were taken from the cuboid bone, but they were also involved in doing various studies and rendered additional addendums after the initial report.

A Yes.

Q Did you see, even through the studies that they prepared, they were unable to arrive at

a definite diagnosis as to the primary location of this tumor?

A Yes.

Q Have you reviewed the report of Dr. Sam Hammer?

A Yes.

Q You are not a pulmonary pathologist, correct?

A No.

Q Dr. Nadji is not a pulmonary pathologist, is he?

A No.

Q How about Dr. Civantos, is he?

A No.

Q Do you have any specific training on immunohistochemical stains and their role in

trying to determine the location of a primary?

A Yes.

Q Have you ever done any publications on those topics?

A Which topics?

Q The topic of immunohistochemical staining and their role in making the determination of the primary --

A No.

Q On what topic have you done any research or publication on?

A Viral infections of the bone marrow.

Q You would agree that that has nothing to do with the case at hand? Viral infections of the bone marrow have nothing to do with the case of Bob Allen?

A They have to do with immunohistochemical.

Q In determining viral infection of the bone marrow, correct, that's what your pathologists have to do?

A Yes.

Q Bob Allen didn't have that?

A No.

Q He had a cancer that was metastatic?

A Yes.

Q You are of the opinion that it was metastatic arising from the kidney?

A Yes, sir.

Q And the treating physicians have expressed the opinions in their medical records that it was a primary tumor arising in the lung, correct?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: No.

BY MR. YAFFA:

Q Did Dr. Temple write in his note that Mr. Allen was suffering from a primary lung tumor?

A Yes, sir.

Q Did Dr. Marco arrive at the diagnosis that this was a primary lung tumor?

A Yes.

Q Did Dr. Sridhar engage and undertake a specific treatment for a primary lung tumor?

A Yes, sir.

Q And that treatment for a primary lung tumor began in January of 1999 and continued up through the point until the point that he actually wrote the note that you referenced earlier,

correct?

A Yes.

Q That was the note regarding the interleukin?

A Yes.

Q After Mr. Allen died, Dr. Sridhar had the ability to review all the information and had medical records and studies performed on this patient?

A Yes.

Q Have you seen the death certificate?

A Yes.

Q What opinions did Dr. Sridhar arrive at when he signed the death certificate for Mr. Bob Allen?

A Lung cancer.

Q You think Dr. Sridhar was wrong?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Yes, sir.

BY MR. YAFFA:

Q In regard to this case, can you tell me when you were first contacted?

A March of 2002.

Q All right. I'm going to mark as Exhibit Number 2, the notice of taking your deposition.

A Yes, sir.

Q Did you get a copy of this?

A Can I see it?

I don't know if I got a copy of it.

Q Sure.

A Yes, I did.

Q Did you happen to review the list of documents that you were to bring to your deposition?

A Yes, sir.

Q Have you brought with you all the documents that are requested?

A Yes, sir.

Q I know you handed me a CD when you walked in. I don't know whether or not everything contained within Plaintiff's Exhibit Number 2, which is your notice of taking deposition, is contained on the CD, so I would like to go through and discuss each item with you and you will tell

me if it's on here, and if so, how it got on here.

A Yes.

Q With regard to all medical records, this is number one, medical records, documents, data or other materials relating to James Robert Allen,

including but not limited to notes, test results, and examination records.

A I don't have those with me and they are not on the CD. They are about three boxes of documents.

Q Did you bring a list of what was provided to you and what you reviewed in preparation for your deposition?

A No, sir.

Q Are you able to tell me what you reviewed?

A Yes, sir.

Q Tell me what you reviewed.

A I reviewed the medical records of Mr. Allen going back to his presentation at his initial treating orthopedic, up to the time of his expiration at the University of Miami.

Q Can we agree that the medical records span, then, the time frame beginning in December of '98 through his death in October of '99?

A Somewhat before December of '98, which is when he started having pain. There are also

records from his prior visits to his orthopedist regarding other ailments, knee pain and back pain.

Q Did the knee or back pain, in your

opinion as an oncologist retained by the tobacco industry in this case, did the knee and back pain have any relation to the cancer that resulted in his death?

A Can you please repeat the question?

Q Sure. Did the knee and back pain that you just referenced that existed in the prior records before the acute period that we were talking about, November, December of 1998 --

A Yes, they existed in the prior.

Q Did that knee or back pain have anything to do with the cancer that you believe resulted in Mr. Allen's death?

A No, sir.

Q All right. What other medical records have you reviewed?

A I reviewed the opinion of Dr. Hammer, which is essentially not a medical record.

Q You say it's not a medical record?

A It's not a medical record of Mr. Allen.

Q Dr. Hammer, you will agree, took the blocks from the pathology that exists in this case from the cuboid bone and prepared slides and did immunohistochemical staining on them?

A Yes.

Q Do you think you are qualified to discuss the staining that Dr. Hammer did on the blocks of tissue that were obtained from Bob Allen's ankle?

A Yes, sir.

Q All right. What opinion did Dr. Hammer arrive at in regard to where the most likely primary was?

A Lung cancer.

Q And you think he's mistaken?

A Yes, sir.

Q In regard to the immunohistochemical stains that Dr. Hammer performed, you are familiar with the CK7?

A Yes, sir.

Q Can you tell me what the likely presentation will be for an adenocarcinoma with a CK7?

A About 15 to 20 percent of a lung cancer.

Q Fifteen to 20 percent of adenocarcinoma of the lung when positive for the CK7?

A Yes.

Q What about negative?

A Eighty-five to 80 percent.

Q Let me ask the question a little bit

differently.

What's the likelihood of a positive reaction to CK7 with a primary lung tumor?

A What I told you before, 15 to 20 percent.

Q Is there any literature at all that you can point me to that would support your opinion that only 15 percent of a primary lung tumor will express positively with regard to CK7?

A Yes, sir. If you are talking about a primary excised lung tumor, you may have a much higher percentage of positivity, whereas if you look at metastatic disease, the positivity may go down even if the primary tumor was positive with CK7.

Q I understand that is your opinion, but I'm asking you if you can identify any text or source that you think is authoritative and stands for the proposition that you are expressing.

A Not at this time.

Q Have you done any research at all --

A Yes, sir.

Q -- to deem whether or not there is literature that supports this opinion?

A Yes, sir.

Q That you can direct us to?

A Yes.

Q Please direct us there. Give me the cite, the location, the text, any place at all that you believe we can go to that would support your opinion that 85 percent of primary lung tumors will test negative for CK7.

A Can I have a personal computer?

MR. GERAGHTY: Well --

BY MR. YAFFA:

Q Listen --

MR. GERAGHTY: Hold on. Why don't you just tell him what he would need to do to point him in that direction.

THE WITNESS: There is a file on the CD rom that I gave you that says research, within which there is a library with references.

BY MR. YAFFA:

Q All right.

A And it would be there.

Q In regard to the CD that you provided to me, that contains a section called research?

A Yes, sir.

Q Do you believe that the articles contained within the topic titled research are

authoritative on this topic that we are talking about?

A Yes, sir.

Q What other topics are covered by the research section?

A The frequency of kidney cancer presenting as a metastatic lesion on the foot or hand, and the different genetic and antigenic expressions of clear cell carcinoma and other kidney cancers, as well as the pertinent studies from Dr. Sridhar regarding lung cancer.

MR. YAFFA: I need you to read that back to me, Vic. I'm sorry.

(Thereupon the referred to question and answer was read back by the reporter as above recorded.)

BY MR. YAFFA:

Q I want to touch on that, if I could, because I don't understand something you said.

A Yes.

Q How many different research sites do you think are contained within the research section that you believe are authoritative of the various topics we are talking about?

MR. GERAGHTY: You mean that are on the CD?

BY MR. YAFFA:

Q On the CD.

A There are about 60 or 70 references.

Q Sixty or 70?
A Yes.
Q Some of them have to deal with the CK7 issue we were talking about?
A Yes, sir.
Q Do any of them have to deal with CK20?
A I don't remember.
Q Do any of them have to deal with mucicarmine stains?
A I don't know exactly.
Q You said some of them have to deal with the frequency of kidney cancer metastasis to the foot and hand.
A Yes.
Q Specifically, what's your understanding as to how frequent kidney cancers will metastasize to those locations?
A More often than other tumors.
Q Will lung cancers metastasize to the foot and hand?

A Yes, sir.
Q Will lung cancers metastasize to the kidney?
A Yes, sir.
Q Will kidney cancers metastasize to the lung?
A Yes.
Q You then said something about different

genetic examples or experiences regarding clear cell cancers.

Did you say something like that?

A Yes, sir.

Q Expression was the word you used.

Have you looked at the actual pathology in this case?

A I have seen the, some of the immunohistochemistry micrographs from Dr. Hammer that I asked to review.

Q Other than seeing the immunohistochemical micrographs that were done by Dr. Hammer, have you seen any of the pathology that exists in this case?

A No.

Q When you say immunohistochemical micrographs, we are talking about the photographic

slides?

A We are talking about the big 11 -- 10 by 10 or 11 by 11.

Q The only slides that I'm aware of are a series of about 24 slides that were contained in a sheet, a plastic sheet. Is that what we are talking about?

A I saw the prints of those slides.

Q So you saw actual blowups of the slides?

A Yes.

Q Is it your understanding that those prints from those slides were done by Dr. Hammer or were done by Dr. Hensley?

A Who is Dr. Hensley?

Q Dr. Hensley is the general pathologist that's been retained by the tobacco industry located in Verona, Virginia.

A I don't know.

Q Okay. So other than seeing the prints of the micrographs, is it your testimony you have not seen any other pathology in this case?

A That's correct.

Q Do you know whether or not Dr. Villa, who is a pathologist and your partner, correct?

A Yes, sir.

Q Has Dr. Villa seen any of the pathology in this case?

A I don't know.

Q You don't know?

A No, I don't know.

Q Do you know whether or not Dr. Villa has taken the blocks of the pathology that exists in this case and has made additional slides?

A I don't know.

Q Do you know whether or not Dr. Villa, again, who's your partner and a pathologist, has done his own immunohistochemical staining in this case?

A I don't know.
Q Can you tell me whether or not you know what a primary lung lesion likely expression would be for CK20?
A No, I cannot tell you.
Q You don't know one way or the other?
A No.
Q What about mucicarmine stains?
MR. GERAGHTY: Objection to the form.
BY MR. YAFFA:
Q Can you tell me what would the likely expression be for a primary lung cancer?

A What kind of lung cancer?
Q Adenocarcinoma.
A Probably around 80 to 90 percent.
Q Positive?
A Yes.
Q What about a kidney cancer?
A What kind?
Q Let's talk clear cell cancer.
A About 20 percent.
Q What about other types of kidney cancer that you feel are likely caused by smoking?
A Transitional cell carcinoma of the kidney.
Q Yes.
A About 15 or 20 percent.

Q Any other types of kidney cancer that you think might express positively with mucicarmine staining?

A Chromophobe, c-h-r-o-m-o-p-h-o-b-e. The other kind I don't know.

Q As we sit here today, you would agree a primary adenocarcinoma is much more likely to express positively to mucicarmine than any of the other kidney cancers?

MR. GERAGHTY: Objection to the form of

the question.

THE WITNESS: Primary adenocarcinoma of what?

BY MR. YAFFA:

Q Of the lung.

MR. GERAGHTY: Same objection.

BY MR. YAFFA:

Q You would agree?

A Yes to your question.

Q Okay. So yes, a primary adenocarcinoma of the lung is much more likely to express positively to mucicarmine than any other kidney cancers?

A Yes.

Q In regard to this issue of clear cell carcinoma and whether or not Mr. Allen actually suffered from a true clear cell carcinoma, do you have an opinion, within a reasonable degree of

medical probability, based upon anything that you have seen?

MR. GERAGHTY: Object to the form.

THE WITNESS: Your question is not clear.

BY MR. YAFFA:

Q Sure. Do you believe that Bob Allen had

a clear cell carcinoma?

A Yes.

Q And your opinion that he had a clear cell carcinoma, is that based upon your adopting the reference in the records or based upon you actually looking at pathology and arriving at that conclusion yourself?

A By accepting the conclusion of the pathology in the records.

Q Have you ever seen adenocarcinomas of the lung that have a clear cell presentation?

A No.

Q Are you familiar with cells that become old, they begin decomposing and begin to take on glycogen and take on a clear cell appearance?

MR. GERAGHTY: Objection to the form.

THE WITNESS: No.

BY MR. YAFFA:

Q Have you seen this reported in the literature?

A No.

Q Have you seen it over the course of your career, where cells, cancer cells will accumulate glycogen as they become old and take on a clear cell appearance?

MR. GERAGHTY: Same objection.

THE WITNESS: No.

BY MR. YAFFA:

Q Have you ever seen a true clear cell carcinoma of the lung?

A No.

Q Do you think that Mr. Allen had a clear cell carcinoma of the lung?

A No.

Q What type of cancer do you believe he had?

A Kidney cancer adenocarcinoma.

Q A clear cell carcinoma of the kidney?

A Of the left kidney.

Q Are you able to give me a better medical diagnosis other than a clear cell carcinoma of the left kidney?

MR. GERAGHTY: Objection to the form.

THE WITNESS: He had a metastatic clear cell carcinoma of the left kidney.

BY MR. YAFFA:

Q We are going to come back and talk about that, you and I. Let's go about five more minutes

and we can take a break.

You were telling me what you reviewed.

You said the medical records from the orthopedist, but you really focused on the time frame when he came in with the foot problem.

You reviewed the records of Dr. Hammer, and you agree Dr. Hammer arrived at the diagnosis of lung cancer based upon his immunohistochemical staining, but you disagree with his diagnosis.

A Yes.

Q Do you think that the immunohistochemical staining in this case showed positively to mucicarmine?

A No.

Q Do you consider yourself an expert on these specific immunohistochemical --

A No.

Q All right. What else have you reviewed other than the medical records you told me about and Dr. Hammer's report?

A The pertinent literature that I mentioned to you before that's included on the CD.

Q Anything else?

A The radiographs, the actual radiographs on Mr. Allen's case.

Q You reviewed the films yourself or did you rely on the report?

A No, I reviewed them myself.
Q Did you review them by yourself or with the help of a radiologist?
A By myself.
Q Which specific films did you review and are relying on to express the opinions you will be testifying to?
A All of the films.
Q All of them?
Do all of them come into play and participate in some way, shape or form in the opinions, or are you relying on one specific or a couple of films in particular?
A Several of them.
Q Which particular films do you think are particularly pertinent to this case?
A The initial CT scans in December of 1998.
Q I was trying to correct you.
A I may be off the date by a month or so. The initial CT scans of the chest and abdomen done on Mr. Allen before he started his treatment. The ultrasound of the kidney done later on in his treatment. The magnetic resonance imaging done on his abdomen, the initial stages of his treatment,

and the follow-up CT scans of the chest and abdomen as he progressed with his disease.

Q Okay. Specifically in regard to the films, you have referenced CAT scans, you referenced ultrasound, you referenced MRIs.

Do you consider yourself an expert in interpreting any of those studies?

A Yes, sir.

Q In what areas do you think that you are a qualified expert to testify in?

A I'm a board certified internist as well as a board certified oncologist and part of my specialty is to actually review the imaging that involves taking care of my patients.

Q Do you think you are an expert in interpreting CTs of the chest and abdomen?

A Yes.

Q Ultrasound of the kidney?

A Yes.

Q Do you think that you are an expert in testifying to MRI of the abdomen?

A Yes, sir. As it pertains to oncology.

Q When you say that, I imagine you are talking about trying to determine is there tumor that has spread?

How else does interpreting these films

relate in any way, shape or form in oncology, other than the way I described?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Ask me the question again.

BY MR. YAFFA:

Q Your specific concern in looking at a CT and ultrasound or MRI is to determine what?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Can you please be more specific with your question?

BY MR. YAFFA:

Q Sure. I asked you if you are an expert in interpreting these things. You said yes, as an oncologist, hematologist treating my patients.

I want to know in what circumstances and why you would specifically review these kind of studies.

A I review the actual films on virtually all my patients. It is not always possible, because of the physical restrictions on the patient bringing the films to your review. When that is done, I review all of them.

In particular, I am hesitant to start

treatment or make a diagnosis before I am certain by my own review of the films that the clinical presentation of the patient, including the pathological report, is consistent with my review

of the films and with the description by the radiologist.

Q Anything else?

A No.

Q The specific rationale behind looking at the films is to determine is there a tumor. Do you agree with that?

A No.

Q You want to determine is there spread. Do you think that's why you are looking at films?

MR. GERAGHTY: Objection to the form.

THE WITNESS: I could not answer yes or no to your question.

BY MR. YAFFA:

Q You don't have to answer yes or no.

MR. GERAGHTY: Let him finish, please.

THE WITNESS: I would like to finish. I cannot answer yes or no to your question which is very open-ended and broad. I'm going to try to describe the clinical process by which a qualified physician evaluates, makes a diagnosis and

proposes a treatment.

You may be presented with a problem of a tumor to which it may be pertinent to decide if it's spread or not, if it rises out of a given organ or not, but in reality, what's involved in your decision is also the same things as are

involved when you examine a patient from head to toe, which is what other factors are there, what kind of alterations of other organs may the tumor be causing, is the tumor truly the size that the radiologist describes. Are the lesions through, because you examine the patient -- because you have the clinical insight as an internist to coordinate what you see in the patient with what you see on the x-rays has pertinence or not that you put into this evaluation.

So when you ask me for particular narrow answers, I cannot give them to you like that. I can tell you that it's part of my evaluation the same way as it is part of my physical examination.

BY MR. YAFFA:

Q Believe it or not, in your answer you just gave me, you gave me exactly what I was looking for. I was looking for the reasons why

you look at these films. I may have asked it inartfully and I'll take the blame for that.

But the reason you are looking at the films is to determine is it there, is it as it's described, does it spread, is it also where it will direct you, as a treating physician, on how to best handle the patient. All those things are true, correct?

MR. GERAGHTY: Objection to form.

THE WITNESS: Correct.

BY MR. YAFFA:

Q Is that not true?

MR. GERAGHTY: He said yes.

THE WITNESS: Yes.

BY MR. YAFFA:

Q Now, specifically in regard to the CT scan of the chest and abdomen, you told me that was the January 16th, correct?

A Yes.

Q The ultrasound of the kidney is the one that was done in January of 1999. Is that what you are relying on?

A Yes.

MR. BARR: There was a misunderstanding.

THE WITNESS: There is.

MR. YAFFA: Help me.

MR. BARR: You mean ultrasound or MRI?

MR. YAFFA: I said ultrasound.

MR. GERAGHTY: What did you say before that?

MR. YAFFA: The January 16th CT of the chest and abdomen.

THE WITNESS: Instead of an ultrasound in January, there was an MRI done in January.

BY MR. YAFFA:

Q Okay.
A And I think the ultrasound was done at a later date.
Q Okay.
A I may not be correct without notes in my hand.
Q The ultrasound, you believe, was done when?
A I think the ultrasound was done in April of '99.
Q Okay. And then there was a follow-up CT scan. There was lot of them done?
A Yes.
Q Which one are you relying on?

A August of '99. There are two serial CAT scans in August of '99.
Q Okay.
A Of the abdomen.
Q All right. What else did you review?
We will come back and talk about what your opinions were, but I want to know what else you reviewed other than the documents you told me about thus far.
A I do not recollect reviewing anything else.
Q Any depositions at all?
A Excuse me. Dr. Feingold's deposition.
Q Dr. Feingold is being deposed this

morning.

A I'm sorry. Not deposition.

Q His report?

A His report.

Q Do you know Dr. Feingold?

A Yes.

Q Do you refer him patients from a pathology standpoint?

A Not to him.

Q You are on staff at South Miami?

A Yes.

Q Where else?

A Baptist and Mercy Hospital.

Q Okay. Have your privileges ever been revoked or suspended?

A No.

Q Have you ever been sued before?

A No.

Q All right. Other than Dr. Feingold's report, what else have you seen?

MR. GERAGHTY: Let me just -- would it be helpful to you if you had the CT to review? Not the CT, the CD, to review these things?

THE WITNESS: No. Nothing else.

MR. GERAGHTY: I want to make it easier.

BY MR. YAFFA:

Q All right. Unfortunately, you chose not to bring these records, or were you instructed not to bring them?

A No, I chose not to bring them. They are really bulky.

Q I want you to understand that I was willing to come to your office and take your deposition there, but it was being done here at the request of the law firm.

The medical records and all the documents and data that you reviewed in this case are back at your office. Is that right?

A Yes, sir.

Q Did you make any notes as you reviewed any of the materials?

A Yes.

Q Where are those notes?

A They are very short, simple notes. Most of the times I read them and dispose of them. I have two pages of notes here that I have at hand. It's mostly a summary of the treatment and some -- and the names of the attorneys, if I ever met with them on any particular thing, but this is three pages.

Q Let's go ahead and take those three pages.

MR. GERAGHTY: Let me see that.

MR. YAFFA: We will mark those as

Exhibit Number 3.

BY MR. YAFFA:

Q In regard to the notes that were made as you reviewed the documents, are those back at your office or did you throw those away?

A I throw those away.

Q And do you throw those away as you generate the notes we are going to mark as an exhibit?

A No.

Q Were these notes made by you as you reviewed the records or made by you as you had conferences with the lawyers and learned more information?

A It was mostly when I had conferences with the lawyers and I reviewed my own understanding of the case.

MR. YAFFA: Okay. While he's looking at the notes, I would like to mark those Exhibit Number 3 and I'll take a break.

(Thereupon a recess was taken in deposition, after which the deposition continued as follows:)

(The documents referred to were thereupon marked as Plaintiff's Exhibit Numbers 2 and 3 for Identification.)

BY MR. YAFFA:

Q All right. I would like to go through the notes with you, if I could.

A Yes.

MR. GERAGHTY: I'm going to follow along with you, Doctor.

BY MR. YAFFA:

Q It says September 26, 2002. Is that right?

A Yes.

Q Do you have any of the correspondence?

A The only correspondence that I remember having received is this.

Q Is what, the notice?

A Yes.

Q You didn't receive a letter from the firm asking whether or not you would be willing to get involved, or a letter from the firm when the records were initially sent saying Doctor, enclosed please find?

A It was mostly personal communications.

Q Do you recall how it was you were first contacted in this case?

A No, I told you before.

Q You told me you don't know how they arrived at your name. I'm now asking you a different question.

How was the initial contact made, by

letter, by phone or in person?

A I don't remember if it was by phone or in person, but it was either of the two.

Q And to the best of your recollection, you said it was March of 2002.

A Yes, sir.

Q Who was it that contacted you the first time?

A Mr. Barr.

Q And specifically, can you tell me what you were asked to do in regard to this case?

A To give my medical opinion regarding the actual potential cause of the patient's tumor and the overall course of illness.

Q Okay. If I understand you, it's two parts. Potential cause of the tumor.

A Yes.

Q And number two was the course of the illness.

A Yes.

Q Now, in regard to the potential cause of the tumor, you told me that in your opinion this was a primary renal. We have not talked about all the reasons, but that's the opinion you expressed so far.

A I was never asked to say whether this

was a kidney cancer or not.

Q Do you have an opinion --

A I was actually --

MR. GERAGHTY: You have to let him finish.

MR. YAFFA: I thought he was.

THE WITNESS: No. I was actually asked whether I thought that this person had a lung cancer that could have been caused by smoking.

BY MR. YAFFA:

Q That was the question that was asked, did Mr. Allen have a lung cancer that might have been caused by smoking.

A Yes, sir.

Q And your answer in response to that question is specifically what?

A When I was given the records, I had the opportunity to review the records, my answer to them was I don't know if this man had a lung cancer or not, because the pathology is clear cell carcinoma and I'm not satisfied.

As a matter of fact, the initial records that Mr. Barr had that he provided to me, since the records kept coming along, did not have the report of the MRI, so I asked to see both the

report of the MRI as well as the actual films, and when I was shown the films and I reviewed them, I told him this man had kidney cancer. There is a kidney tumor here and they missed it at the time of the initial radiology reading.

Q Okay. What about the issue of whether or not you said the potential cause of the cancer. Are you able to tell the jury in this case that Bob Allen's smoking did not cause his cancer?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: Yes.

BY MR. YAFFA:

Q You can say that with 100 percent certainty that the smoking had nothing to do with --

MR. GERAGHTY: I'm going to --

MR. YAFFA: You need to let me finish.

BY MR. YAFFA:

Q Are you able to tell this jury with 100 percent certainty that smoking had nothing to do with the cancer that led to his death?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Nobody knows what caused

the kidney cancer that he had, and I don't know if smoking had anything to do at all with Mr. Allen's

kidney cancer.

BY MR. YAFFA:

Q All right. So you recognize, as you sit here right now, that Mr. Allen had a 75 pack year history of smoking?

A Yes.

Q You recognize that his history of smoking may have caused or contributed to his death?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: I'm sorry, you are speculating, not me.

BY MR. YAFFA:

Q I'm asking you. Do you recognize that his smoking may very well have caused or contributed to his death?

You don't know?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: I don't know.

BY MR. YAFFA:

Q You don't have an opinion whether

smoking did or didn't?

A I'm going to repeat my answer. I don't know what caused his kidney cancer.

Q Okay. So Mr. Barr came to you and asked you did this man have a lung cancer that was

caused by smoking.

What else did you do after you got back to him and said listen, I need more information, the reports you gave me are incomplete? You asked for the specific studies you told me about?

A Yes.

Q Okay. Have you expressed any other opinions to Mr. Barr or the other lawyers that retained your services on behalf of the tobacco industry that you plan on expressing at the time of the trial?

It's your opinion this was a kidney cancer?

A Yes.

MR. GERAGHTY: Objection to the form.

BY MR. YAFFA:

Q What other opinions do you have as a hematologist oncologist practicing here in Dade County, Florida, that we haven't talked about?

A I was not retained by the tobacco

industry.

Q You are retained by the law firm representing the tobacco industry. You are testifying on their behalf.

A I was retained by the law firm of Shook, Hardy and Bacon.

Q Okay. They represent the tobacco

industry. They hired you to review records and express the opinions that you are here to express today.

Tell me specifically, other than this man had a kidney cancer, what other opinions you have that you and I have not yet talked about.

A I have many other opinions regarding his medical case. If you are kind enough to ask me about all the things, I will be more than happy to tell you.

Q The opinions in regard to the medical care, are they all in line with and consistent with that final opinion that this man had kidney cancer?

A Yes, sir.

Q I'm sure we will get to all of the other opinions as we go through the films. I do want to ask you specifically in regard to the films what

you saw.

In regard to the January 16th CT of the chest and abdomen, did you see the 1.6 by 1.8 spiculated mass in the left upper lobe?

A No.

Q You did not see it?

A No.

Q You think Dr. Messenger was incorrect with regard to that lobe in the --

A Yes.

Q What did you see?

A There is a composite mass on the left upper lobe that is at least three and a half centimeters long that bifurcates as it goes down, and may even be three actual different lesions.

MR. YAFFA: I do need the films.

MR. GERAGHTY: He's not done with the answer yet, counsel.

THE WITNESS: Can I pick up?

MR. YAFFA: Do whatever you want.

THE WITNESS: There are actually three lesions on the left upper lobe. I do not agree with his description as is spiculated because it's an irregular mass.

BY MR. YAFFA:

Q Have you been advised that the pulmonologist retained by, again, by the same law firm that retained you on behalf of the tobacco industry, has looked at these films and has expressed the opinion there was, in fact, a 1.8 by 1.6 spiculated mass in the letter upper lobe?

A No.

Q You haven't been advised of that?

A No.

Q Have you been advised of Dr. Adler's opinions?

A No.

MR. YAFFA: Let's take a break, get the films and I need a view box.

MR. GERAGHTY: Do you have one available?

MR. YAFFA: I'm sure you do. If not, we can take a break and I'll have one delivered. It's whatever you want to do.

MR. GERAGHTY: Okay. We will do our best to accommodate you.

You need to speak to me?

MR. BARR: Yes.

(Discussion off the record.)

MR. YAFFA: Vic, from this point on,

I'll need this tomorrow until I tell you to stop.

MR. GERAGHTY: Let Mr. Yaffa get his bearings.

BY MR. YAFFA:

Q It looks to me like we are looking at a January 16, 1999, CT of the chest. Is that right, Doctor?

A Yes.

Q Are you able to tell me what images we have before us here at this point?

A We have a film in which the upper two-fifths of the film is taken by imaging from the abdomen and scout films of the abdomen CAT scan.

The lower three-fifths is taken by

serial seven millimeter cuts from the base of the neck down into the upper thorax at the level of the -- immediately below the axilla.

Q Obviously we had this view box brought in and it's sitting here on the middle of the conference room table.

Do you think the facility is adequate to look at this, evaluate and interpret this film for us?

A Yes, sir.

Q All right. Now, specifically in regard to the images that we have before us, are they numbered in such a way that we can say we are looking at sheet X and images one through six, for example, in order to direct someone else that's going to look at this film where it is you are specifically discussing?

You know it's got to be here. I just don't see it.

A All right. Two, three, four, five, six, seven, eight, nine, 10, 11, 12, 13, all of them with a plus C.

Q Okay. So --

A Upper left corner of each cut.

MR. YAFFA: Okay. I want to go ahead and mark this sheet, the sheet of all these different images as exhibit number four.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 4 for Identification.)

BY MR. YAFFA:

Q Doctor, the last thing I wanted to do is obscure any image.

Does that obscure any of the images that

you need to look at for your opinions?

A No, Mr. Yaffa.

Q You can call me Andy.

A Thank you.

Q All right. Now, specifically in regard to images two through?

A Thirteen.

Q Is it your opinion that you are able to identify some abnormalities in the left upper lobe of Mr. Allen's lung?

A Yes, sir.

Q Tell me specifically on what images you are able to identify the abnormality, and we will talk about the specific image and its abnormality.

A Image nine through 13.

Q Okay. Now, image nine, which is in the fourth row furthest on the right. Is that correct?

A Yes, sir.

Q All the way through image 13, which is immediately below it?

A Yes, sir.

Q We are dealing with a total of five images?

A Yes.

Q Now, I would like for you, beginning on image number nine, to describe for me as if you were interpreting the abnormalities you see on image number nine, what the abnormality is and then we will go ahead and do the same thing for 10, 11, 12, and 13. I want to take it step by step.

Image number nine, describe to me the abnormality that you see.

A There is an irregular area of tissue that measures approximately one and a half centimeters in a transverse diameter that arises about one centimeter from the interior pleural surface.

Q Interior?

A Anterior pleural surface.

Q Okay. Is there any abnormality that you see on that image that you want to comment on?

A No.

Q On number nine, I'm giving you a Sharpe, it's a permanent pen, please circle the

abnormality that you think exists on there that you just described for us.

A You want to do it permanent?

Q Yes.

A Okay.

Q Hang on to this because you will do it again with 10.

Number 10, what abnormality do you see?

A There is an irregular nodule that measures one by two centimeters, approximately located in the middle of the left upper lobe immediately below the same location of the previous cut, that has irregular areas of contrast uptake. It appears to have a very small satellite lesion located, again, toward the anterior surface -- correction, strike that, please. Toward the anterior pleural side.

Q Are you all done with image number 10?

A Yes.

Q Circle that for me. I would like you to tell me whether or not what you circled in image number 10 you believe is an extension of what was being visualized in number nine.

A Yes.

Q Does number nine appear to be spiculated?

A No.

Q Does number 10 appear to be spiculated?

A Yes.
Q Let me move to number 11 and tell me what you see.
A There is a smaller lesion with two components, one component of a higher density with contrast uptake and another one more anterior with lesser density.
Q Show me, if you would, the portion that has increased intensity. Is that the bright spot I'm looking at?
A You are pointing to it, yes.
Q All right. And the other area is where?
A Immediately above it.
Q You are saying that's a separate mass?
A I'm saying that's a separate abnormality. It's a second component.
Q You finish describing it and I'll go ahead and ask you specific questions. It's my mistake. I'm sorry. Start over.
A I see an irregular smaller nodule that has two a part separate component. One that's posterior with a higher contrast and uptake, another one anterior, anterior that measures one and a half centimeters in diameter.
Q Anything else in number 11?

A No.

Q Okay. I would like for you to circle the abnormality you see on image 11 and what I'm going to do now may be a little more different, but I want you to draw a line down from the area of the increased density or increased uptake or increased contrast, I think was the term you used, and label that A.

MR. BARR: If you need to take it off.

BY MR. YAFFA:

Q You do whatever you want.

A It's not easy to do.

Q Let's lay this down.

A Can you do that?

Q Yes. Okay. And B, I want you to take from the second area that you described as being right here. Is that correct?

A Uh-huh, yes.

Q What did you describe that second area as being?

A As an area that's of lesser contrast uptake.

Q Let's call that B.

Now, in regard to the abnormality that you see on image number 11, do you believe that

likewise is an extension of what was seen

previously on 10 and nine?

A Yes.

Q Does the image that you see on number 11 appear to be spiculated?

A No.

Q Okay.

A There are two small nodules that are about 0.3 centimeters each that are separated by a band of lung tissue of about the same diameter and that are consistent with a progression from the superior or the previous cut nodules.

Q Is it your testimony that what you have marked as A and B are separate nodules or are they part of the same nodule that exists immediately above it?

A I cannot tell on that cut.

Q Okay. Is there any other abnormality you want to comment on on number 11 that we have not talked about?

A Mr. Yaffa, when you refer to A and B, you were referring to a previous cut we already talked about.

Q When I said A and B, I asked you whether or not A, which you just marked on number 11, and

B which you also marked on number 11, if they were separate nodules.

A Yes, okay. I could not tell.

Q You cannot tell. You understood my question?

A I thought that your question was referring to cut number 12.

Q We haven't gone to that yet.

At this point you identified what you believe is one mass that extends from image number nine through 10 and 11 and you told me, to the best of your ability, the abnormalities as best you can describe them?

A Yes, sir.

Q Let's go on to image number 12.

On number 12, are you able to identify any abnormality?

A Yes, sir.

Q Describe for me the one you see on 12.

A I see two separate nodules of, as I said before, about 0.3 centimeters in diameter, separated by a band of lung tissue that could be in response to an interior aspect of the previous seen nodules -- nodule, excuse me, on the previous cut.

Q Any other abnormality you want to describe on image number 12?

A No.

Q Now, image number 12 I would like for you to go ahead and circle, identify the abnormality that you just described for us. I

would like for you to go ahead and with an A and a B on image number 12, identify the two nodules that you feel exist on this image.

Now, in regard to A and B on number 12, are you able to tell me whether or not those are extensions of the same mass that appeared in the prior slices 11 through nine, or are these two separate nodules that are not part of what was seen immediately above it?

A Nodule A is an extension of the interior aspect of the nodule seen on the previous cut. It has the same morphology and it has about the same contrast enhancement.

Nodule B could be a progression of the upper part of the same nodule or not. I cannot tell.

Q So you can't tell in regards to B, but definitely in regards to A, you think it's an extension of A that you saw immediately before?

A Yes.

Q On number 13, are you able to identify any abnormalities on that slice?

A Yes.

Q Please describe for me, to the best of your ability, what you see on image 13.

A I see two nodules of about 0.3 to 0.4 centimeters located in the middle of the left

upper lobe contiguous, but not touching each other.

Q Do you believe that the abnormalities that you described in the left upper lobe on number 13 are an extension of what was seen in the images immediately preceding it?

A Yes.

Q How many different abnormalities are you able to identify on image number 13?

A Two.

Q Do you think these are distinct masses or do you believe these are extensions of what was seen immediately before?

A They are extensions of what is seen immediately before.

Q Are you able to tell anybody that more likely than not, within a reasonable degree of

medical probability, there is anymore than one mass in the left upper lobe?

A I do not see any other mass.

Q Again, in regards to what you did on images number 12 and number 11, giving an A and B of the two portions, I want you to do the same thing and tell me what it is you are labeling.

A is what, sir?

A A is the lower nodule, B is the upper nodule.

Q When you say the lower nodule, you have

the patient lying on his back?

A I correct myself. A is posterior nodule, B is anterior.

Q Now, I want to ask you specifically below the line where you drew the B, I see an area of increased intensity or uptake on number 13. I am not a radiologist as you know.

Tell me what it is I'm looking at and pointing to immediately adjacent to the circle you drew, as well as the B line that goes to the upper right-hand corner.

A A cut blood vessel.

Q It has nothing to do with any of the abnormalities you saw in the preceding slices?

A Not that I can tell.

Q You had mentioned earlier that there was an area of trifurcation or bifurcation.

Are you able to testify, more likely than not, within a reasonable degree of medical probability, that the abnormalities described in the left upper lobe bifurcate at any point?

A Yes.

Q Describe for me the locations where you see the bifurcation and/or trifurcation and explain to me what you are seeing and what you are describing.

A It's between images 11 and 12.

Q Between 11 and 12 you actually are able to see two different portions of what you believe is an extension of what existed before?

A Yes.

Q And are you telling me that it's tumor bifurcation between 11 and 12?

A Yes.

Q Is there any area of trifurcation? That was the word you used earlier.

A I didn't say trifurcation.

Q I thought you did, but the record will speak for itself.

If you did, you were mistaken?

A Yes. I didn't mean trifurcation. I think I said there may be three different lesions.

Q Okay. At this point you told me about how many lesions?

A I've told you about a lesion as it courses down, appears to bifurcate into two separate, we call them legs. Since the cuts are 0.7 millimeters, I cannot tell if other -- I'm sorry, 0.7 centimeters between cut 12 or -- I'm sorry, cut 11 and 12 there is actually a separation between the more superior mass and the lower part of the mass, assuming that the contiguity is preserved as it is shown in cut from cut.

Q Nine?

A Nine to cut 11. There is then a contiguity also with cut 12. Therefor, it bifurcates.

Q Okay. How many lesions have we talked about thus far that you feel existed in the left lung?

A Either one lesion that bifurcates down or three lesions.

Q Are there any other abnormalities that

you feel existed in the chest film, the chest CT of January 16th -- strike that.

You have a difference of opinion from the treating radiologist, Dr. Messinger, in this case.

A Yes.

Q Is there anything else that you think existed on the January 16th CT scan of the chest that was not commented on by Dr. Messinger?

A Yes.

Q Please tell me what else. Are we done with exhibit number four?

A Excuse me, Mr. Yaffa. Let me correct myself. Can I see if you have it, because I do not remember, at this time, the actual report from Dr. Messinger to look at the remainder of the lungs.

Q I have nothing.

A Okay.

Q I came expected you would have everything.

A Actually, I go back to what I said before, there is an area on the lower lobe on the left lung that was not commented on.

Q Okay. Let's go ahead and put the sheet

up that you think shows the abnormality. Is it the left lung?

A Yes.

Q In the left lower lobe that you don't think was commented on.

Again, you have now put a sheet of images up that you feel demonstrate some abnormality in the left lower lobe that was not commented on?

A Yes.

Q Please describe for me the image numbers you feel contain the abnormalities that were missed.

A Image number 16 plus C to 24.

MR. YAFFA: This will be exhibit number five.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 5 for Identification.)

BY MR. YAFFA:

Q They contain images 16 through 24. Again, I would like for you to take the pen that you had been using and circle the area of abnormality in the left lower lobe that you

believe was not commented on or missed by Dr. Messinger.

A I told you 16 or 17?

Q You told me 16.

A No, it's 17. I'm sorry.

Q All right.

A Image 17 on the posterior aspect of the left lower lobe there is a triangulated nodule that measures about a centimeter and a half in length on the transverse measurement and about 0.8 centimeters to one centimeter on the posterior anterior measurement. It is ill defined and adjacent, but not apparently invading the costal vertebral aspects of the thorax.

Q Are you able to circle in number 17 the area of abnormalities that you think exist?

A Yes.

Q The front of the patient is where?

A The front of the patient.

Q The anterior portion?

A The anterior portion of the chest is here.

Q Okay. The posterior is to the back?

A Yes.

Q The patient's head is toward us?

A The patient's head is away from us. We are looking at it from below.

Q From the feet?

A Yes.

Q Okay. Now, go to image number 18 and describe for me the abnormality and circle it for me.

A There is a irregular elongated nodule that extends immediately below the area of the previous cut that measures about a centimeter in anterior posterior length and is adjacent to the costal vertebral angle, and in this cut, it seems to be either touching or invading the pleural surface on that side.

Q Please circle the area of abnormality that you see.

You believe that's an extension from what existed on slice 17?

A Yes.

Q Okay. Let's go to number 19.

A There is an elongated nodule that measures about two centimeters in anterior posterior length and about 0.8 centimeters on transverse length that is close to the great vessels and the costal vertebral angle or joint

and is immediately below the previously seen abnormality.

Q Circle that for me.

Next one, please.

A That is the same.

Q Number 19 or 20?

A That is the same elongated nodule that is in contiguity on the -- with the previously described nodule that is adjacent to the descending aorta and that measures one and a half to two centimeters in anterior posterior length and is distinct on the transverse length since it seems to be making body with the aorta.

Q What does that mean?

A I cannot tell where it finishes and where the aorta wall is.

Q Circle that for me.

Okay. What is the next one, please.

A It is the same elongated nodule that is smaller on the transverse diameter than when seen on the more superior cut. Again, adjacent to the aorta, measuring less -- strike, please.

About one centimeter in anterior posterior length.

Q Okay. Anything else you want to say

about 21?

A No.

Q Okay. Circle the abnormality that exists in 22.

A There is only an area of pleural thickening that overlies the descending aorta. Besides that there is an area of nodularity that is adjacent to the left main stem, the left main stem bronchus that seems to correspond to an area of tumor or adenopathy that was described by Dr. Messinger.

Q Can you circle that for me? You said it was contiguous to an area of abnormality described by Dr. Messinger.

Did you, in fact, see hilar spread?

A I can't tell if that's a nodule spread.

Q Did you see mediastinum spread?

A Not in these views.

Q In any of the views you looked at on the 1/16 CT scan of the chest?

A No, I could not identify it.

Q In regard to the areas of abnormality that we have been talking about on images 17 through 24, I know we are in the process of talking about it, you have referred to it as a

nodule. Is it, in fact, a nodule or don't you know?

A When you describe a radiograph, you try to assign a semantic value to what you are seeing. What you really see is difference in contrast from an area that has air, fat or bone that is replaced by something else.

When I say and radiologists refer to a nodule, they actually refer to any one of those areas. Some other people may call it thickening. Some may call it a band like abnormality. Some may call it a space occupying lesion, but in reality, what we are referring to is the same thing.

Q You see something there, but you don't know?

A Exactly.

Q Did you see the radiologist who interpreted subsequent CT scans of the chest that talked about the thickening seen in the left lower lobe and described it as scar tissue?

A I don't agree with that.

Q Do you think that's cancer?

A I don't -- that is not a thickening. That is a nodule.

Q Again, is what's seen on images number 17 through 24, could that be scar tissue?

A Yes, it could.

Q You are certainly not testifying, more

likely than not, within a reasonable degree of medical probability, that what you are seeing here is cancer?

A Please repeat your question.

Q You are not saying, more likely than not, what is seen on images 17 through 24 is more likely than not cancer?

A I'm saying that's more likely to be cancer.

Q You are saying it's more likely to be cancer?

A Yes.

Q If the radiologists who interpreted all the subsequent films were of the opinion that the left lower lobe didn't change and they call it scarring, you think they are wrong?

MR. GERAGHTY: Objection to the form.

THE WITNESS: I don't agree with them.

BY MR. YAFFA:

Q You don't agree with them?

A No.

Q Let's just get this clear on the record.

So far in terms of the participating physicians, you don't agree with Sridhar in regard to his final diagnosis as reflected on the death certificate.

MR. GERAGHTY: I'll object to the form.

BY MR. YAFFA:

Q Correct?

A I agree with his final diagnosis on the record.

Q On the death certificate. That's the question I asked you.

Do you agree with that final diagnosis reflected --

MR. GERAGHTY: Objection to form.

THE WITNESS: No.

BY MR. YAFFA:

Q Do you disagree with Tom Temple that the diagnosis was the primary lung?

MR. GERAGHTY: Objection to form.

THE WITNESS: He did not reach the diagnosis.

BY MR. YAFFA:

Q You can assume what it is I'm asking you

to assume.

Assuming Temple reached the diagnosis this was a primary lung diagnosis, you disagree with him?

A Yes.

Q You disagree with Dr. Marco?

A Yes.

Q You disagree with Dr. Messinger?

A Yes.

Q You disagree with the subsequent treating radiologists assuming they, too, note this was an area of scar tissue?

A Yes.

Q Let's finish talking about the area of abnormality in the left lower lobe.

A The area --

Q We are now up to image number?

A Number 23, the area becomes less distinct and more or less visible with contrast. It has an area of triangulated extension into the left lower lobe that seems to come from above, but when looking at the more lower cut, which is cut 24, it's difficult for me to tell whether this is the same abnormality coming from above the chest, becomes very narrow and flat against the pleural

surface or there are two different abnormalities.

Q Are you able to say that what exists in number 23 is an abnormality, and if so, please circle it.

A It is an abnormality.

Q And do you think it's an extension of what exists above?

A Yes.

Q Okay. The next cut and final cut, assuming you are going to abide by the limits where you said you saw the abnormality, number 24, tell me what you see there.

A I see a nodule that again has a elongated shape with an anterior posterior length of about one and a half centimeters that is irregular inside the nodule. It's adjacent and contiguous with a pleural surface overlying the aorta and it's about one centimeter in transverse diameter.

Q Any other comments you want to make about the left lower lobe?

A No.

Q I guess it's prudent that we talk about any other opinions that you have about the films in this case while we have the view box out before

we put it away. I want to do that, but before we move on to the other CTs, assuming you want to talk about them, I do want to ask you whether or not you tracked these abnormalities as specified by you in the left lung to determine what happened to them over time as this patient received treatment medically through chemotherapy and through radiation.

What happened to these different lesions, did they grow, did they change, did they stay the same, the left upper lobe nodules enlarged?

A I cannot tell for certain on the left lower nodule because the thickness of the cuts are

different. There were multiple nodules that appeared on the other lobe, and so I could not tell for sure some of the nodularity on the left lower lobe, if some of the nodularity on the left lower lobe changed or progressed.

Q Is the radiograph, the CT scan of the chest that you and I have been talking about consistent with a primary lung tumor?

A Yes.

Q Okay. The next film you wanted to talk about was a January, 1999 MR of the abdomen. Is

that correct?

Before we move on to that, I want to ask you, is there anything else you want to talk about on the chest CT of January 16th?

A Not unless you have any other questions.

Q Do you have any other opinions about any other abnormalities that existed that was not commented on by somebody?

A Other than what films in particular?

Q January 16th, CT of the chest and abdomen.

A Let me look at the CT scan of the abdomen, please.

(Thereupon a recess was taken in deposition, after which the deposition continued as follows:)

BY MR. YAFFA:

Q All right. Before we broke, you wanted to talk about the CT of 1/16/99.

Identify for me the images we are looking at.

A We are going to look at images 54 plus C and 55 plus C.

Q Okay. I'm going to mark this sheet as number six.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 6 for Identification.)

BY MR. YAFFA:

Q On 54 plus C and 55?

A Yes.

Q Please show me the area of abnormality that you think exists, and let's identify it and then circle it.

A Image 54, I'm looking at the left kidney. This is a axial cut where you can see on the anterior aspect of the left kidney a small irregularity of the surface that does not pick up contrast and is ill defined and it measures about one centimeter at the base and about a half centimeter in height.

Q Are you able to tell me whether or not this is fluid filled or solid?

A No.
Q No, you don't know either way?
A I don't know either way.
Q Okay. What about on image number, slice number 55?
A You see a contiguous cut, same location,

of the lesion that is about one centimeter width on the base and about one centimeter high, slightly contrast and it is adjacent to the other lesion.
Q Do you think it's an extension of what existed in slice 54?
A Yes.
Q Okay. Are you able to tell me if 55 is solid or fluid filled?
A I cannot tell.
Q Anything else you want to comment on on images 54 and 55 in regard to the left kidney?
A No.
Q Do you see anything in regard to the right kidney?
A No.
Q Okay. Are there any other images on the CT scan of January 16, 1999, that warrants further discussion, any other abnormality that you saw that you want to talk about?
A No.
Q Okay. Let's put that one away.

Just so the record is clear, I'm going to take possession of these and give them back to you after Messinger's deposition, okay?

MR. BARR: Okay. After when?

MR. YAFFA: At the conclusion of his deposition, you can walk out of there with them.

MR. GERAGHTY: Tomorrow or Thursday?

MR. BARR: That's Wednesday.

MR. YAFFA: Wednesday. You have Mackler tomorrow and somebody else. I don't know who it is.

MR. BARR: I don't know of anybody else tomorrow.

MR. YAFFA: Mackler tomorrow and Messinger will be the next day.

BY MR. YAFFA:

Q Doctor, the next study that you said you wanted to talk about was the January, '99 MR of the abdomen. Is that correct?

A Yes. Again, I may be mistaken, sir, and we may not have an MR of January, '99. I think we do.

Q Go ahead and get me whatever it is you want to talk about.

A We can start with these.

Q You want to talk about all of those?

A What?

Q You want to talk about all of those?

A Yes.
Q Okay. We are going to be here a while.
Doctor, we are now talking about the MR of the abdomen, correct?
A Yes.
Q Performed what date?
A Performed on the 26th of January of 1999. MRI of the abdomen that was done at the request of Dr. Sridhar, and on his note, the request states rule out kidney cancer. The written report says renal artery stenosis.
Q It doesn't say anything about rule out kidney cancer?
A No, the report from the radiologist --
Q Says renal artery stenosis?
A Yes.
Q You are telling me the order says rule out kidney cancer?
A Yes.
Q Tell me, do you see kidney cancer on the January 25, 1999, MR of the abdomen?
A I see the same abnormality as seen on the CT scan of the abdomen on the left kidney both axial cuts as well as coronal cut.
Q Who interpreted this study?

A Dr. Morillo.
Q Dr. Morillo you think missed the boat?
MR. GERAGHTY: Objection to the form.
THE WITNESS: Yes, sir. What do you mean by that, missed the boat?
BY MR. YAFFA:
Q You think he made a mistake?
A Yes.
Q It's the fifth doctor in your opinion that you think made a mistake?
MR. GERAGHTY: Objection to the form.
THE WITNESS: Yes, sir.
BY MR. YAFFA:
Q Tell me what slices you see the abnormality on the MR.
A Slice 11 of 16 on the sheet that I have put on my left on the view box.
Q So on sheet, which we are marking as exhibit seven, image number what?
A Number 11 of 16.
Q Okay. Any other images on sheet number seven?
A No.
Q Please circle the abnormality that you see on number 11.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 7 for Identification.)

BY MR. YAFFA:

Q Describe it for me as if you were describing it to one of your patients.

A There is an exophytic area on the anterior aspect of the left kidney that measures about one centimeter in height and about one centimeter in base. It seems to take up the same contrast as the remainder of the kidney. It makes body with the remainder of the kidney.

Q Okay. Anything else on exhibit number seven that you think is an abnormality that was missed?

A No, sir.

Q Okay. Let me have exhibit number seven, please.

Let's go ahead and move on to the next film. Tell me what that is, please.

A There is two abnormalities here that were not reported on the MRI of the abdomen. There is a area of indentation that does not pick up contrast on the lower part of the left pole of

the left kidney. That measures about one by one centimeters. Actually, one and a half by one centimeter in and extends toward the other

direction of the renal pelvis and I think it's consistent with a renal infarct.

Q That's sheet number eight. I want you to tell me the image number.

A This is image, it's labeled slice 520.

Q Okay. Again, who's the interpreting radiologist on this one?

A Dr. Morillo.

Q Is this the same study we were talking about before?

A Yes, sir.

Q Okay. Do you think he made a mistake here, too?

A Yes, sir.

Q Do you think that the infarct is in any way, shape or form related to cancer?

A No.

Q Are you able to date when the infarct occurred?

A No.

Q Are you able to tell me whether it was a calcific infarct versus hemorrhagic?

A You usually don't develop hemorrhagic infarcts in the kidney. I don't know what was the actual cause of the infarct, but this patient was a diabetic and that's a common happening in diabetics.

Q All right. Any other abnormality on sheet number eight which is the second portion of the MR of January 25th of 1999?

A Yes, sir. There is a very solid irregularity on the lateral aspect of the left kidney that, in my opinion, is consistent with a previously one that I described on the axial cut. That's on frame -- excuse me, on slice 13 diagonal 20. That measures on this view about 0.8 centimeters by one centimeter. It seems to have the same irregular uptake as the other in the remainder of the kidney.

Q Okay. Please circle that abnormality.

Any other areas of abnormality on sheet number eight that you want to talk about?

A No, sir.

Q Do you think that Dr. Morillo made a mistake in regard to that?

A Yes.

Q What else do you want to talk about in

regard to the January 25th MR?

A January 26th.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 8 for Identification.)

MR. YAFFA: Sheet number nine.

(The document referred to

was thereupon marked as
Plaintiff's Exhibit Number
9 for Identification,
a copy of which is attached
hereto.)

BY MR. YAFFA:

Q Okay.

A Sheet number nine, slices 11 diagonal 20, and 12 diagonal 20, there is a same exophytic abnormality on the lateral and anterior aspect of the left kidney that is less well seen on this image which has enhancement on fat, and that is on the same location as the images that I described before on the CT scan of the abdomen from a few days before.

Q Okay. Can you circle the areas of abnormality that you think were missed?

A Yes.

Q Do you think more likely than not that the area of abnormality as circled by you on the January MR is cancer?

A Yes, sir.

Q Are you able to tell the jury that this cancer did not spread from a primary lung?

A Yes, sir.

Q Conclusively?

A Yes, sir.

Q Your basis for that statement?

A That I can see the case on the whole length, and when you look at the same lesion as the patient reaches the end of his life, the only lesion that has enlarged in the kidney is that one. He has not developed any other metastatic lesion on the opposite kidney, which is the rule for metastatic lung cancer when seen in the kidney.

Q What about the lung lesions, didn't they grow and spread?

A Yes.

Q So, again, getting back to my question, are you able to tell this jury with 100 percent certainty that what you see in the kidneys did not

spread there from the lung?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: Yes, sir.

BY MR. YAFFA:

Q Okay. What other areas of abnormality do you see on the MR?

A Exhibit number 10.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 10 for Identification.)

BY MR. YAFFA:

Q Okay.

A Slices or strike that, please. Slice 19 diagonal 30 there are two abnormalities seen on the kidney, on the left kidney. One is the same exophytic lesion located on the anterior and lateral aspects of the left kidney that on this image has a slightly lower attenuation than the remainder of the kidney. That measures one centimeter in the base and less than one centimeter on the height, probably 0.1 centimeters, and again seen is the area of deep indentation on the surface of the posterior aspect

of the left kidney that I think is consistent again with renal infarct.

Q Circle the two areas of abnormality that you think exist on that study.

Next sheet, please. Any other abnormality that you want to talk about?

A No.

Q Okay.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 11 for Identification.)

BY MR. YAFFA:

Q Continue, sir.

A On slice 20 diagonal 30, the abnormality

that I see is the same deep indentation that progresses caudally on the left kidney consistent with the lower portion of an infarct.

Q Okay. Circle it for me, please. Anything else you see --

A No.

Q -- on the MR?

A No.

Q What about this last sheet?

A I don't think I want to use this sheet.

Q All right. Is there anything else you want to talk about with regard to the January 26, 1999, MR of the kidney?

A No.

Q The next study you referenced that you are relying on to express your opinion was a ultrasound of the kidney taken in what you believe was April of 1999.

A Actually, it was taken in January.

Q Okay. Let's do the January, 1999 ultrasound.

A I'm sorry, it was taken in August.

Q There were some taken before.

MS. FURNESS: You still have slides here, too, before you get too out of sorts.

MR. BARR: This is completely out of sorts.

THE WITNESS: Here is the MRI.

BY MR. YAFFA:

Q What are we looking at now?

MR. BARR: 8/24/99 renal sonogram.

BY MR. YAFFA:

Q Before we get to that, did you see any renal sonograms prior to that?

A No, sir.

Q Before we get to that, did you see that there was a study done in May of 1999 where his kidneys were studied with gadolinium? His meaning Bob Allen's kidneys were studied with gadolinium.

A I don't remember.

Q Assuming there were these abnormalities that you just described for me and they did do a study in April or May of 1999 of his kidneys where he was injected with gadolinium and they were specifically looking at the kidneys, wouldn't you expect that the abnormality would again have shown up during those studies?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Yes, sir.

BY MR. YAFFA:

Q Have you looked to see whether or not there is such a study?

A I don't remember.

Q Have you looked to see whether or not the interpreting radiologist of the gadolinium

study, in fact, interpreted and picked up the abnormality they feel existed in the kidneys?

A I don't remember.

MR. BARR: We have all the films here. Do you want him to refer to a particular film?

MR. YAFFA: Refer to the May of 1999 study where he was injected with gadolinium.

MR. BARR: Gadolinium means an MRI, so May of 1999 MRI. CT chest May 4th, bone scan May 4th, left tibia, May 5th, right clavicle, left foot, plain film, plain film, CT of the chest.

I don't know of any MRI in May. Could it be another date?

MR. YAFFA: It's very possible.

THE WITNESS: The one in January was with the gadolinium.

MR. BARR: Could you be thinking of that one?

BY MR. YAFFA:

Q The one in January?

A That's what C plus means.

Q Okay. Do you have the medical records here? I know they are voluminous. I came here anticipating the Doctor will have what was requested and he doesn't, so I'm at a disadvantage. I can go ahead and do it this way, but if I had the records, I could be real specific about what's going on.

Do you have the medical records here? I can look at the radiologist's report and do this

for you.

MR. BARR: My records are probably all marked up, so I would have to get a clean version.

MR. YAFFA: Ask to see if someone can bring them up. In the meantime, I'll flip through them.

MR. GERAGHTY: Let's see if we can do something in the interim.

MR. YAFFA: That's what I'm trying to do.

BY MR. YAFFA:

Q Doctor, did you see any other studies of the abdomen between January 26th of 1999 and the films that you now want to jump to in August?

A No, there were none.

Q There were none?

A No.

Q The films that you saw in August of 1999, you have those pulled there, correct?

The films you saw in August of '99 showed a drastic change, did they not, in the lesion that existed in the left kidney?

A Yes, sir.

Q Did it show any change at all in regard

to the area of infarct that you feel existed and was missed?

A No, sir.

Q Is the infarct of any significance to you at all in seeing the August film and the initial film in January?

A Yes.

Q What significance is it?

A That the interpreting radiologist that saw the initial films did not describe it.

Q Other than the fact that he didn't describe it, you talked to me about that, what other significance did it have?

A None other.

Q Are you relying on any of the bone scans?

A No.

Q Any of the plain films?

A No.

Q Did you look at the plain film of the chest done in January?

A Yes, I did.

Q Were you able to identify any area of abnormality on any of the plain films?

A I don't think so, Mr. Yaffa.

Q Have you evaluated Mr. Allen's status from a cardiovascular status standpoint?

A No.

Q Any opinion at all about what his life expectancy would have been had he not died of cancer?

A No.

Q Were any x-rays at all of the abdomen taken prior to September of 1999?

A No.

Q Is it fair to state that the first time there is any notation at all within the clinical records of abnormality with the kidney would be August, the films that you want to talk about?

A Yes.

Q Let's go ahead and move onto the August films. That was the next film you said you wanted to talk about, correct?

A Yes.

Q And take me through the areas of abnormality that you think exist and comments you want to make in that regard.

MR. BARR: The CAT scan or sonogram?

MR. YAFFA: He said he wanted to talk about the follow up CAT scan of 8/99, so I was

going to the film he wanted to move to.

MR. BARR: Okay.

MR. YAFFA: I think you pulled it.

MR. BARR: I pulled the sonogram.

BY MR. YAFFA:

Q What do you have there?

A Okay.

Q What are we looking at?

A This is a single sheet of lower cuts of CT scan of the thorax in which the superior portion of the abdomen is included.

Q And the date?

A Dated August 21, 1999. We are looking at a sheet that has cuts with contrast from 37 to 47, to 47 A and there is also a scout film on the CT scan. I'm going to describe the images from 37 down to 47.

Q Okay. Let's call this exhibit number 12.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 12 for Identification.)

BY MR. YAFFA:

Q Okay. Now, in regards to your

description, you are telling me it encompasses the abnormalities on sheet --

A Yes.

Q Describe it for me. Point it out for me

as we go.

A Yes. On the first image, which is 37 with contrast, there is evidence of a pleural effusion on the lower most aspect of the right hemothorax that envelopes the right lobe of the liver. On the same image, there are superior cuts visible of the left kidney. There are cuts visible of both, correction. That's it.

Q Okay. I want you to put an A by the pleural effusion that you think exists, and a B next to the area where you begin to see, you said it's the left kidney and the abnormality related directly thereto.

A No abnormality.

Q You see none on that?

A On that cut.

Q You are looking now at the very first image, which is 37.

A Yes, sir.

Q Do you see, as you go along, the left kidney and the abnormality that you feel exist

related directly thereto?

A Yes.

Q On what image do you believe you can see the left kidney, the abnormality?

A Images 45 to 47.

Q Okay. Identify on number 45 the area of

the left kidney where you see the abnormality.

A I'm circling it on 45.

Q Circle it all the way through.

That's 45, 46 and 47, correct?

A Yes, sir.

Q Are you able to see the area of abnormality on the left kidney on any of the prior slices on the kidney?

A No.

Q Any other areas of abnormality other than the areas you circled and identified?

A Yes, sir.

Q Go ahead.

A There are areas of metastasis on the central aspect of the right lobe of the liver that were not present before.

Q Can you circle the areas of the liver where you see metastasis?

A There is an ill defined area that would

be better identified with other modalities. I'm going to circle on image 40 and then a large area on image 45, 46 and 47.

Q That's the abnormality of the liver?

A Yes, sir.

Q Do primary lung cancers spread to the liver?

A Yes, sir.

Q What other areas of abnormality do you

want to talk about?

A None other.

Q The area of abnormality in the left kidney, is that located in the same location as the abnormality you saw in the January 16, 1999 study?

A Yes, sir.

Q Okay. Are there any other comments you want to make in regard to any of the films that exist in this case that you and I have not talked about upon which you are relying on and expressing opinions today or at the time of trial?

A The renal infarct is unchanged.

Q Anything else you want to talk about with regard to the radiologic films?

A Not on these films.

Q Any other films you want to talk about that you are relying on in expressing any of the opinions here today or plan on testifying to at the time of trial? This is my one and only opportunity to ask you about your opinions. We have the view box out now.

A No, sir.

Q We have fully and adequately covered every opinion you have in this case that you plan on expressing here today?

A We are talking about this?

MR. GERAGHTY: He's talking about this sheet.

THE WITNESS: About this sheet and this exam.

BY MR. YAFFA:

Q What other radiologic studies do you want to look at and talk about with regard to the opinions that you have in this case?

A Follow up CAT scan the day after. It was requested of the chest and there are -- I do not have clear why they requested two follow up studies one day after the other, but the findings as it pertains to the liver on the same cut as I described before.

Q Let me give you the exhibit 13 sticker. Give me the image numbers and what you are looking at.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 13 for Identification.)

BY MR. YAFFA:

Q Please continue.

A Regarding the large pleural effusion that involve the right lobe of the liver, appears to be unchanged. This image, there is a better uptake of contrast in the liver and there is the lesion that appeared to be ill defined on the most

anterior aspect of the right lobe of the liver is very clearly seen, measures about two and a half centimeters in diameter that is consistent with a metastatic lesion.

Q Which image?

A This is better seen on image 112. I'm sorry, let me go back.

This was a non contrasted study.

Q Non contrasted?

A Excuse me. I was looking at the wrong thing. It's a contrasted study. Images 112 to

113 and slightly visible as well on 114.

Q Circle it, please, on 112 through 114.

Any other comments you want to make in regard to exhibit number 13?

A No, sir.

Q Did the radiologist interpreting exhibit 13 adequately pick up on the abnormalities that you think are there?

A On this sheet, yes, sir.

Q What about the sheet before exhibit 12, were the abnormalities picked up by the interpreting radiologist?

A Not in the kidney.

Q Not in the kidney?

A I'm sorry. I don't remember if the radiologist at that time read the kidney as well

or not. I don't remember.

Q That big thing, you think the radiologist missed it?

MR. GERAGHTY: Objection to form. That's not a question. Show him the radiology report.

MR. YAFFA: There is a way to object, otherwise be quiet.

MR. GERAGHTY: No.

MR. YAFFA: Don't raise your voice.

MR. GERAGHTY: Don't raise your voice at the witness.

MR. YAFFA: Don't say anything other than to form.

MR. GERAGHTY: You are talking down to the witness.

MR. YAFFA: You are coaching him.

MR. GERAGHTY: No, I'm not.

MR. YAFFA: The objection is form. If I want to hear more, I'll ask you.

MR. GERAGHTY: You cannot talk down to the witness.

MR. YAFFA: Doctor, do you think that --

MR. GERAGHTY: Show him the radiology report.

MR. YAFFA: Listen to the question.

MR. GERAGHTY: Show him the report.

BY MR. YAFFA:

Q Doctor, look at the film. Do you see a major change on that left kidney?

A Yes, sir.

Q Is it a huge growth?

A It is now consistent with the same lesion that I described before which was not

described by the radiologist and it is now about two and a half centimeters on the base and about two centimeters in height.

Q How much did it change?

A More than doubled.

Q More than doubled and you think that the radiologist missed it?

A I do not remember.

Q Excuse me?

A My answer was I did not remember.

Q You don't remember. What is next?

MR. GERAGHTY: What's next?

BY MR. YAFFA:

Q What else do you want to talk to me about the radiology films, any other abnormalities on exhibit 13?

A No.

Q What about number 14. There is another sheet there.

MR. GERAGHTY: You need a sticker for this one.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 14 for Identification.)

BY MR. YAFFA:

Q Okay.

A This is a sheet that has nine images that are labeled 116 to 122, plus two scout images of the chest. These are eight millimeter cuts of lower -- excuse me, strike that, please.

Of the upper abdomen within the requested CT scan of the chest. The abnormalities that are identified pertinent to my opinion are the metastatic lesions in the right lobe of the liver seen on the CT scan from the day before are much better delineated like on the previous sheet because of better uptake of contrast. There is a large central lesion on the right lobe of the liver that has had a smaller satellite lesion more posterior to it. The large central lesion measures about five centimeters in diameter. It is irregular and it takes all the cuts on this sheet.

The second abnormality which is seen as well as it was seen on the previous day is a left renal mass that has exophytic -- it's located on the anterior lateral portion of the left kidney. It is seen clearly on images 120 to 122. In that

it makes body with the parenchymal of the kidney

as seen more clearly on image 121. It is about four centimeters in transverse length by one and a half to two centimeters in anterior posterior length in image 121.

Q Can you circle it?

A Yes. In what image?

Q The image that you just identified the different measurements.

In regards to the kidney mass, do you think it grew overnight? This is the study that was subsequently done the day before.

A Yes.

Q Do you think it was the same size or larger?

A No, it's the same size.

Q You think it's the same size?

A Yes.

Q Does the radiologist pick up on it on this occasion?

A I don't remember the description of the kidney mass.

Q Okay. What other radiologic opinions do you have in this case that you and I have not yet talked about?

A The ultrasound of the kidneys done a few

days later.

Q Okay. Let's look at that, please.

Other than the fact it shows up there a few days later and it's big, what do you want to talk about? I think everybody agrees, even the interpreting radiologist, unless you tell me he's wrong, too.

A What is your question?

Q What basis does the ultrasound study done a few days later play?

A None of the previous studies can tell whether this is solid or cystic. The ultrasound shows it a solid tumor.

Q Any other reason, any other reason for you wanting to look at the ultrasound other than to state it's solid or cystic?

A No.

Q Okay.

MR. GERAGHTY: Why don't you look at it?

MR. YAFFA: I'm trying to save some time. If you want to look at it, you can.

MR. GERAGHTY: I think we ought to proceed with Mr. Yaffa's questions, the questions and the Doctor giving the answers, and, Doctor, if

you feel you need to look at the film to expound upon it, that's fine.

THE WITNESS: No.

BY MR. YAFFA:

Q Is there any other reason you need to look at that film other than to state that it's cystic or solid?

It's your opinion that it's solid, correct?

A Yes.

Q Okay. Any other reason to look at any other films in this case?

MR. GERAGHTY: Objection to the form of the question. I don't think it makes sense.

BY MR. YAFFA:

Q Do you understand what I'm asking you? I want to know every radiologic basis for your opinion, and you took me through every film you described and described every abnormality. I went through the films you identified that you are relying on, have I not?

A Yes, sir.

Q I took you through each and every film that you identified that you are relying on?

A Yes.

Q I've given you an opportunity to fully explain anything you wanted to say regarding any

of the films that you are relying on, have I not?

A Yes.

Q Is there any other radiologic basis for the opinions you are presenting in this case now or at the time of trial other than what we talked about?

MR. GERAGHTY: Answer the question and I'll make a comment.

THE WITNESS: No, sir.

MR. GERAGHTY: I mean, it sounds like the question you just asked is inconsistent. If you want him to go through one by one, it doesn't make sense from a time perspective. I don't want the record to reflect you were somehow prohibited.

MR. YAFFA: If he wants --

MR. GERAGHTY: Let me finish. It's your deposition. I want you to conduct it the way you want to conduct it. I agree with you that let's move on, so I want to make sure we are on the same page, that's all.

BY MR. YAFFA:

Q You looked at the ultrasound and it's

solid.

What else do you want to tell me about it?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Nothing more.

BY MR. YAFFA:

Q Nothing more, nothing less. Let's move on. Let's get rid of the box and talk about the rest of the stuff.

MR. GERAGHTY: You are going to take possession of the ones that have been marked as exhibits?

MR. YAFFA: Exactly.

MR. GERAGHTY: The record should be clear as to what those are.

MR. YAFFA: Then I don't need to say anything.

BY MR. YAFFA:

Q Doctor, number two is all reports, summaries and impressions and evaluation that you prepared relating to this litigation.

A I didn't prepare any report.

Q All scientific publications that you relied on are contained on the CD?

A They are on the CD.

MR. YAFFA: We will mark the CD as number 15.

(The document referred to was thereupon marked as Plaintiff's Exhibit Number 15 for Identification.)

BY MR. YAFFA:

Q Have you provided a copy of the CD to the lawyers who retained you?

A I'm sorry?

Q Have you made a copy of the CD for the lawyers that retained your services?

A Yes.

Q So, again, Exhibit 15, which is the CD, is a copy for me, correct?

A Yes.

Q All right. Number 4 is all other documents, literature, other data relied by you to form your opinions in this litigation.

Have you relied on anything else other than the medical records, the films that we talked about, and the documents on the CD?

A No.

Q You certainly have not authored anything pertinent to this case, correct?

A No, sir.

Q Were you provided any publications, documents, literature by the law firm that retained your services?

A No, sir.

Q Were you provided any medical literature by the law firm that retained your services?

A Not pertaining to this case, sir.

Q Were you provided anything relating to other cases?

A Yes.

Q How many cases are you involved in on behalf of this law firm?

A At this time, none.

Q At this time, none.

A No.

Q How many cases have you been involved in with this law firm?

A I reviewed three cases.

Q All of them tobacco cases?

A Yes.

Q Why aren't you involved in the other two anymore?

A I don't know.

Q Did you give them an opinion that the

person that was injured was injured related to smoking?

A No.

Q Did any of these three cases involve a primary lung cancer?

A Two did and one did not.

Q This one, the Allen case, you do not feel involved a primary lung?

A No. It's a metastatic kidney cancer.

Q I want to understand the basis for your last answer.

In regard to the three, it was your

opinion that the Allen case did not involve a primary lung. It was your opinion that the other two did involve a primary lung cancer.

A Yes, sir.

Q The other two cases, did you express the opinion that the primary lung cancer could have come from cigarette smoking?

A I actually expressed it did not come from that.

Q So in the other two cases, you were of the opinion it was a primary lung cancer, but the primary lung cancer did not come from cigarette smoking?

A Yes, sir.

Q What kind of cancer did they have in the other two cases?

A Bronchial alveolar carcinoma, which is not related to lung cancer. Actually, ovarian carcinoma.

Q And statistically, is there a connection between ovarian cancer and cigarettes?

A No, sir.

Q Do you recall the name of the other case you were involved in?

MR. GERAGHTY: Let me just -- I'm aware of the two cases. One of the cases I know for a fact Dr. Antunez was not disclosed formally in the case, or has not been yet, so his opinions would

be work product.

I know the case in which he was disclosed is called Thornton versus Philip Morris.

MR. YAFFA: Thornton?

MR. GERAGHTY: Yes, but I would interpose a work product to the identification of the other case.

MR. YAFFA: So you are instructing him not to answer.

MR. GERAGHTY: Yes.

BY MR. YAFFA:

Q The Thornton case you have not been deposed?

A No, sir.

Q What are your charges for this kind of work?

A $375 an hour, and I have separate charges for deposition, which in all honesty I have to look at my table and talk to my secretary to tell you.

Q What about trial testimony?

A Same.

Q You charge a retainer?

A No.

Q Are you able to tell me how many hours you have invested in this case?

A I'm not exactly sure right now, but

there have been more -- there were about 24 hours to 30 hours of work.

Q Twenty-four to 30.

A Yes.

Q You are charging this law firm $375 an hour?

A Yes.

Q How many conferences have you had with

these lawyers?

MR. GERAGHTY: Regarding this case.

MR. YAFFA: Sure.

THE WITNESS: Five.

BY MR. YAFFA:

Q Five conferences regarding Allen.

How many additional conferences have you had with them regarding other cases?

A Five.

Q Total of 10 conferences?

A Yes.

Q I asked for all correspondence between you and the lawyers who retained your services on behalf of the tobacco industry.

You have not brought that with you?

A I told you that I don't have any other than this.

Q I know you don't have it here.

Are you telling me that you don't have it back at your office either?

A I don't have any other correspondence other than this.

Q Do you have it back at the office with the records that were delivered to you?

A I don't have any other correspondence other than this.

Q You told me you have not spoken to any of the treating physicians in this case.

A Yes.

Q When I ask you that question, I'm including the pathologists. You have not spoken to Nadji or Civantos?

A Yes.

Q Your CV that you provided is up to date?

A Yes.

Q I requested copies of your invoices for services rendered or receipts for monies received.

A It's on the CD.

Q I'm sorry?

A It's on the CD.

Q The CV?

A It's on the CD.

Q I thought you were telling me CV.

A No, I'm sorry.

Q Your bills are on the CD?

A Yes, sir.

Q Pursuant to the federal rules, experts are supposed to lay out all the depositions that they have given in the last four years, any kind

of testimony.

Do you, in fact, have such a list of any and all testimony that you have given by way of deposition or trial?

A I haven't had any deposition or trial in the last four years.

Q No deposition in the last four years?

A No, sir.

Q And no trial testimony in the last four years?

A No, sir.

Q Didn't you tell me earlier that you give on average, a deposition, about two a year?

A Yes, sir.

Q And you haven't given any in the last four years?

A That's correct, sir.

Q You have given me all your notes with the exception of those that you destroyed, correct?

A Yes, sir.

Q Let's talk about the notes if we can. We started to talk about it earlier. It's Exhibit Number 3. It says 9/26/02, 18:30.

September 26th of this year, at 6:30

p.m. Is that what that means?

A Yes, sir.

Q And the name immediately to the right is Ellen, you have to help me, sir.

A Phieffer.

Q P-h-i-e-f-f-e-r?

A Yes.

Q And next to that is?

A Sean and Gonzalo.

Q What does that mean?

A What's Sean's last name?

MR. GERAGHTY: Would you prefer he just read these down and when you get to a point, rather than you have to keep doing that, if he comes to a point, you can stop.

THE WITNESS: 9/26/2002, date of a meeting. According to my notes, Ellen Phieffer -- excuse me. Ellen Phieffer, I have a note that says about phone. We may have been in contact with another person over the phone, but I didn't write it down.

Mr. Barr, who is Gonzalo.

MR. GERAGHTY: For the record, Sean Reilly.

MR. YAFFA: Okay.

THE WITNESS: Allen case. It says 12 midnight.

BY MR. YAFFA:

Q You had a meeting for five and a half hours?

A Yes, sir.

Q Where did this meeting take place?

A Here.

Q Here in the office?

A Yes.

Q On September 26th?

A Yes.

Q And then it says number one, go ahead.

A Fact review. We reviewed the facts of Mr. Allen's life and the history of his smoking. That's what it means by 1935, his date of birth. From Boston, he moved here. Since he was 14 years old, around one and a half packs per day. I was given the information verbally that the deposition of his widow, she stated he never stopped smoking.

Q Let's stop there for a moment.

Were you ever provided the widow's deposition?

A No.

Q So you have not read Sylvia Allen's

testimony either in its entirety or bits and

pieces?

A No.

Q Have you, over the course of your career as a hematologist oncologist, had patients who developed cancer which you feel was a result of smoking and these patients have been simply unable to quit even after the diagnosis?

A Yes.

Q Were you advised that that's exactly what happened in this case?

MR. GERAGHTY: Objection to the form.

THE WITNESS: I wasn't advised about that in that term. What I was advised about was that there was a discrepancy between what the records said and what the deposition of Mrs. Allen said.

BY MR. YAFFA:

Q Were you advised that Mrs. Allen testified that even after the diagnosis of cancer, he couldn't stop smoking?

A Yes, sir.

Q And you experienced that yourself?

A Yes, sir.

Q Okay. Let's keep reading, please.

A Marco, on the record he states that the patient quit smoking in February, 1999. It's about a week before seeing him. There was a

question of alcohol use. There was a note that he may have had three admissions to the hospital that were alcohol related, but I didn't have a record of that. That's why I put when. He had been advised on those occasions to stop smoking, but he had refused.

MR. GERAGHTY: That's smoking or drinking there?

THE WITNESS: I'm sorry. Drinking. No, smoking.

BY MR. YAFFA:

Q It's smoking?

A Smoking, but he refused.

Q Have you, in fact, written notes like that in the past regarding patients who are unable to stop smoking who made repeated attempts?

A Can you please clarify your question?

Q Sure. Apparently you received some information that Mr. Allen allegedly refused to stop.

Do you know whether or not he refused to stop or whether or not he was simply unable to

stop?

A I didn't see those records.

Q You haven't seen any of those records?

A No.

Q This information that you have thus far in the note is information relayed to you by the

lawyers?

A Yes, sir. I'm sorry, regarding that line and the discrepancy with Mrs. Allen.

Q Okay. What about the alcohol?

A There is actually reference in the record that he drank one and a half to two drinks of vodka a day. I knew that he had an increased alcohol intake.

Q Are you expressing the opinion in any way, shape or form that that alcohol intake, one and a half to two drinks a day, in any way, shape or form caused or contributed to his death?

A No.

Q Let's go ahead and move on the note, please.

A Diagnosis, 1993 with hypertension. His height and weight, which is pertinent.

Q Let's stop there. In 1993, who made the diagnosis of hypertension?

A I don't have it on my note here.

Q Did you see a medical record?

A Yes.

Q Do you have any information regarding how well controlled his hypertension was?

A No.

Q In regard to his height and weight, six foot, 200 pounds?

A 220 pounds.
Q Okay. Is it your opinion that this man was obese?
A Yes.
Q Is it your opinion that he was morbidly obese?
A No.
Q What was his ideal body weight given his height?
A About 170 pounds.
Q I'm six foot one and I'm two and a quarter.
A Yes.
Q Are you going to tell me that I'm obese?
A I'm six foot two. My ideal body weight is 180 pounds.
Q Something tells me that that scale that

you all use for ideal body weight is way off.
Do you think --
MR. GERAGHTY: That's a personal comment.
BY MR. YAFFA:
Q Do you think you are obese?
A Yes.
Q Do you think Mr. Allen was obese?
A Yes.
Q Morbidly obese?
MR. GERAGHTY: Objection, asked and

answered. He gave you an answer to that question.

BY MR. YAFFA:

Q I didn't hear it. I was too busy thinking about how crazy your scales were.

A No.

Q To what degree and extent does his height of six foot and weight of 220 pounds play a role, if at all, in his illness?

A Obesity is the most consistent factor linked to the etiology of kidney cancer.

Q Okay. And are there statistics that you are aware of relating obesity and the extent thereof to kidney cancer?

A Yes, sir.

Q Are you able to give me a more descriptive term regarding Mr. Allen's obesity and the role that you think it played?

A No, sir.

Q Are you able to quantify to any degree the role, if any, you think his weight played?

A No, sir.

Q Let's keep going.

A 1996, DM, diabetes mellitus. RX means oral treatment. There is a question of what medication he was taking for his hypertension.

1996, he had a left knee arthroscopy.

Q Stop there. In regard to the 1996 diabetes mellitus, did you receive information about what medication he was taking orally?

A No.

Q Did you receive --

A I'm sorry, excuse me. I may have. I didn't note it down on this note to refresh my memory. I didn't think it was pertinent.

Q Do you have any information at all about how well controlled his diabetes was?

A I only have information regarding the control of his diabetes as he was in the hospital,

and it was not well controlled.

Q In the hospital?

A Yes.

Q When he's not eating as he should be, correct?

A Yes.

Q When he was in the hospital, this guy, I imagine you are talking about from August through the time that he died.

A Yes.

Q Death's door step, unable to eat and function, you would expect his diabetes to be out of control?

A Yes.

Q But again, I'm talking about before.

A No.

Q The time of diagnosis up until the time --

A I answered to you, I told you that the only information that I have is from the time he was in the hospital when he was not well controlled.

Q Is it your opinion --

MR. BARR: Just a second, please. Wait until he asks the question.

BY MR. YAFFA:

Q Okay.

A Okay.

Q Is it your opinion that the diabetes played any role at all in the illness that ultimately caused his death?

A No.

Q Okay. Then you get down into an area called number two.

A Yes.

Q But I see information both down the left-hand side of the page and down the right-hand side of the page.

A Yes.

Q Where does that all fit in?

A As I am making my notes, I am also making notes regarding whether there is an association between alcohol use, lung cancer,

kidney cancer, and underneath that, there is a note that says done by law firm, no association.

Q What does that mean?

A That means that the lawyers from Shook, Hardy and Bacon may have told me we did that research and there's no association between alcohol and kidney cancer.

Q Okay. Good.

A Then --

Q Do you agree with that?

A No, I didn't say anything about that. I did my own research.

Q I'm asking you, do you agree there is no association between alcohol and kidney cancer?

A No, there is no association.

Q So you agree that the alcohol in no way, shape or form played a role in the disease that ultimately killed this man?

A Yes.

Q Is there a relationship between alcohol and lung cancer?

A Yes.

Q Okay. Let's go ahead and move on.

A Since I'm reading on the left-hand column, it is weak association for kidney cancer, it says hypertension analgesics and smoking.

Q You are saying there was, as reported to you by the law firm, they told you that there was

a weak association between hypertension analgesics and smoking and kidney cancer?

MR. GERAGHTY: Objection to the form.

THE WITNESS: I don't know if that

was -- I don't remember, as I read the note, if that was given to me by the law firm, because it's another paragraph, or if it was my own research putting that down. That part I don't remember.

BY MR. YAFFA:

Q Knowing cancer as you do as a treating oncologist, do you think you needed to rely on the law firm to give you that information or is this information that was well known to you?

A I didn't need to rely on the law firm to give me that information.

Q Keep working either down the left side of the page to complete the left column, assuming that's where you went next, or we can go back to number two.

A Then I go to number two. October, '98, he suffers right foot trauma. The reason why I put worse is because the pain was getting worse.

January 15, 1999, orthopedist finds that there is a cuboid bone infiltration with something. He refers him to see Dr. Temple who does, by that time, a scooping of the lesion, and what he says is Civantos. I'm referring to Dr.

Frank Civantos. Undifferentiated and I cannot read my own handwriting.

Q Nesting?

A Nesting pattern, clear cell and thin.

Q Can I stop you?

A Sure.

Q Did you look at any point at the slides and determine with your own eyes whether or not he did, in fact, have an undifferentiated cancer?

A No.

Q Did you look at any point at the slides to determine whether or not he had a nesting pattern?

A No.

Q Same question with regard to clear cell, other than looking at the blowups that we talked about earlier.

A No.

Q Go ahead.

A Then I refer the ultrasound that was done later on, that says my review, that's my own review. I can see a small mass on the left kidney.

Q Hang on. You skipped something.

A Workup. I'm sorry, workup left upper lobe, 1.8 centimeter spiculated lesion. I put that's all the workup read. All means all the

workup read.

Q You know that's not true. You have seen the rest of the report.

A Yes.

Q Go ahead.

A I am referring there to the CT scan to the upper lobe description.

Q Go ahead.

A Below that I put down my review of the ultrasound shows it's a left renal cortical mass.

Q Small mass?

A Small mass, and outside radiologist, I don't know what I meant by that, if outside of Sylvester, because there were radiologists reading from Baptist. There is a sulcus left lower lobe nodule.

Q When you say sulcus left lower nodule, what do you mean?

A Sulcus is the area that I was describing when I read the previous films. Adjacent to the costal vertebral angle. It's called the sulcus.

Q Okay.

A It means -- then I make a note that a bone scan is positive. Thoracic spine, clavicles and ribs.

On the most right-hand side.

Q Before you leave that and go to the right-hand side, why don't you comment on, in your notes, the remainder of the positive findings that came about from the January 16th CT scan, because they talked about the metastasis to the spine.

Don't you remember seeing that?

MR. GERAGHTY: Objection to the form of the question.

THE WITNESS: I was not being comprehensive on these notes.

BY MR. YAFFA:

Q You are just raising what in those notes?

A Just salient points.

Q Go ahead.

A Right-hand side, comes back on the report of a second opinion from pathology. I list down the immunohistochemical report. Keratin and EMA up, renal cell antigen negative, CEA negative. PSA negative. HER2NEU negative.

Q Okay. Can I ask you some questions before you move on?

What would you expect a primary renal cell cancer to express in regard to the renal cell

antigen?

A In reality I do not expect a renal cell

clear carcinoma to express any antigen for certain, because there is no antigen that are certain for marks, clear cell carcinoma of the kidney.

What I expect it to have is a pathology, histopathological evaluation that is consistent with a clear cell carcinoma, and if we are having a kidney specimen in our hands, I would have to conclude that is from the kidney. If we are having a metastatic lesion, I would have to look for a kidney tumor.

Q Is it your testimony that the immunohistochemical responses as listed here in regard to the keratin, the EMA, the renal cell, the AS, the CEA and HER2NEU are consistent with a clear cell carcinoma?

A No, sir. My answer is that the histopathology is what tells us what is a clear cell carcinoma or not. The immunohistochemistry does not tell us whether it is a --

Q My question is specifically on that point. Is the immunohistochemistry consistent with this being a renal primary?

A Yes, sir.

Q Is it consistent with this being a pulmonary primary?

A Yes, sir.

Q In regard to your opinion, assuming you're right that this was a primary renal cancer, is it your opinion that this was a routine, typical clear cell variant of a primary kidney cancer, or did Mr. Allen have some sort of abnormal variant?

A I think this was a renal cell carcinoma, a clear cell type.

Q Routine?

A I don't know what you mean by routine.

MR. GERAGHTY: Objection to the form.

BY MR. YAFFA:

Q How often do you see a primary renal cell cancer of this type in patients that you treat?

A This is the most common type of renal cancer.

Q Mr. Allen didn't have some sort of strange, off the wall variant of this disease. This is something you guys see and deal with all the time?

A Yes.

Q Okay. Let's go to number three.

A Treatment, that's the RX. RT to the foot and spine. Then chemo. One to 4 of '99. Paraplatin Taxol. He had progressive disease.

Four to 6 of '99. N-a-v-e-l-b-i-n-e and g-e-m-c-i-t-i-b-n-e, with progressive disease,

June of '99, taxotere, t-a-x-o-t-e-r-e.

July, 1999, between quotation marks, CPT 11, which is the same thing as saying irinotecan, i-r-i-n-o-t-e-c-a-n, until mid August, 1999.

August, 1999, interleukin-2. He developed infections, and then thalidomide was given, and there is an ultrasound of the kidney done at that time that shows a solid --

Q Mass?

A You interpret my writing better than I do, mass. Enlarging mass.

MR. GERAGHTY: There is only so much we can do.

THE WITNESS: Below that, MRI of the kidney read at UM as normal.

On the notes that I put down 1/26/99, it says still undifferentiated tumor, is to refer to the note of Dr. Sridhar, put down in his notes

stating that the tumor still does not have a diagnosis.

BY MR. YAFFA:

Q This is going back to the 1/26/99?

A Yes, sir, but not to the MRI, but to the actual notes.

Q But again, that's still early on in the treatment?

A Yes.

Q Okay. What does it say over to the left?

A Over on the left, I was asked that question by the -- by Mr. Barr on whether the treatment that this patient received was consistent with a treatment of lung cancer. I said yes, and I just put a note to me to pull out a recent trial of the New England Journal of Medicine of chemotherapy regimens that were done by ECOG, which is Consortium of Cancer Centers, and then I put a note there was clear cell carcinoma on this trial.

Q Okay. Let me see if I get this straight. It says get New England Journal of Medicine, trial, ECOG of chemo.

What does the rest of it say?

A My impression is conditions, but I'm not certain.

Q Of chemo conditions. And it says question mark well.

A Where?

Q Clear cell cancer on it.

A Yes.

Q This is what Mr. Barr was asking you to do?

A No. This is my own question. Mr. Barr just asked me if the treatment was the kind of treatment that people received for lung cancer.

Q The treatment that Mr. Allen received, we know was the kind of treatment that people get for lung cancer because that's what he was treated for.

MR. GERAGHTY: Objection to the form.

BY MR. YAFFA:

Q Correct?

A Yes.

Q Are you critical of the treatment this man received?

A Yes.

Q So you think that all these doctors were wrong in terms of the diagnosis and they were

wrong in terms of the treatment?

MR. GERAGHTY: Objection to the form.

THE WITNESS: No, sir.

BY MR. YAFFA:

Q No, sir?

A No.

Q You told me they were wrong in terms of the diagnosis. We have been through that.

You identified five doctors that you think were wrong.

A Yes.

Q Dr. Sridhar is the doctor that was in control of this patient's treatment, correct?

A Yes.

Q You think he was wrong in terms of the treatment?

A No. He gave him the right treatment for the wrong diagnosis.

Q At what point do you think Dr. Sridhar's mistake should have been corrected?

A I think that as soon as this gentleman did not respond to treatment with the most effective first line combination of agents, the diagnosis should have been put to question again and it was not.

Q At the time Mr. Allen was diagnosed in January of 1999, what was his prognosis, assuming your diagnosis is correct that he had a clear cell kidney cancer primary that metastasized to the spine, to the lungs, to the liver and all the other areas that you think it metastasized to?

MR. GERAGHTY: What's the question? What is the prognosis?

BY MR. YAFFA:

Q Instead of diagnosis, what was Mr. Allen's prognosis?

A Less than six months to live.

Q Regardless of the kind of care?

A The median survival of someone with metastatic renal cell carcinomas of Mr. Allen's extent is five to six months. Treatment can alter the course of disease of a very small but a

definite number of patients.

Q If Mr. Allen was sitting in your office in January of 1999, looking you in the eye and said to you, Doctor, in reality, am I going to survive, would your answer have been to him in all likelihood no?

A Yes.

Q Regardless of the treatment, the best

possible treatment in the world that you could offer, he was doomed at that point?

MR. GERAGHTY: Objection to form.

THE WITNESS: Not necessarily.

BY MR. YAFFA:

Q Help me.

A If the diagnosis had been made correctly that he had metastatic renal cell carcinoma, the next treatment would have been to do a left nephrectomy.

Q But at the time of diagnosis, you recognized that the cancer had metastasized to the lungs, correct?

A Yes.

Q To the spine, correct?

A Yes.

Q Where else do you believe, the liver?

A It was not diagnosed at the time of the diagnosis.

Q Where else do you believe it had already spread at the time of diagnosis?

A The foot.

Q Where else?

A That's all that was found at that time.

Q Do you believe there was microscopic

spread to many other areas, but not yet manifested itself?

A Yes.

Q Now, you and I are talking, I'm a patient in your office with all of these findings. I look at you in the eye and say, Doctor, I need to know the truth, am I going to live. Give me the best possible treatment that's out there and available.

A My answer would be the next best treatment for you, given the fact that your condition is appropriate, is to have a left nephrectomy.

Q Assuming you do that, am I going to live?

A I don't know. The reason to indicate the nephrectomy is twofold. First of all, there is a small group of patients that is probably counted on the single digit percent, that whenever subjected to a nephrectomy, have a complete remission.

Secondly, there is a second group of

patients that have a longer survival than patients that do not undergo nephrectomy and I don't understand what group you would belong to.

Q If we take your experience, given your training, your education and all the years that you have been doing this, at the time Mr. Allen presented in January of 1999, and had a correct diagnosis been made, the odds are vastly in favor, even with the right diagnosis and with the nephrectomy that you are suggesting, that he was going to die?

A Yes, sir.

Q You are unable to testify, more likely than not, within a reasonable degree of medical probability, had there been a diagnosis of what you believe was the correct diagnosis and had they undertaken a nephrectomy and offered him everything else out there, you are unable to say he would more likely than not live?

A That's correct.

Q Okay. And again, as to the cause of this, whether or not smoking caused or contributed to it, you don't know?

A I don't know.

Q We move on to page two. Please read me the note and I'll stop you if I have questions.

A Second opinion, path. Quotation marks,

nesting. There is no --

Q You said second opinion what?
A Path.
Q Pathology?
A Pathology between quotation marks, and then I put on the left-hand side, it is a question. I'm asked about the nesting pattern, meaning regarding etiology, and I put in my own handwriting no etiological meaning.
Q Stop. You were asked by the lawyers does the fact that there is a nesting pattern, does it have any etiological meaning at all to identify where the likely primary was, correct?
A Yes.
Q And when you either investigated it or when you answered the question, you were able to tell them the fact that there is nesting, it has no etiologic meaning at all?
A That's not in my opinion.
Q Okay.
A Between quotation marks, clear cells, between quotation marks, pinkish clear, and I put a conclusion, renal cell carcinoma.
Q And have you ever seen a clear cell presentation of adenocarcinoma of the lung?
A No, sir.

Q Pardon me. Just one second.

Are you okay?

MR. GERAGHTY: How much longer do you think you have?

MR. YAFFA: Not too much longer. I'm going to try to wrap it up in two minutes.

MR. GERAGHTY: Let's take a two minute rest room break.

(Thereupon a recess was taken in deposition, after which the deposition continued as follows:)

BY MR. YAFFA:

Q We were on page two.

A Yes.

Q And the last question was regarding the clear cells, pinkish clear.

Do you see that?

A Yes.

Q I asked you whether or not you have ever seen an adenocarcinoma of the lung with a clear cell presentation.

A No.

Q Do you know whether one exists?

A Yes.

Q Does one exist?

A Yes.

Q Is it reported in literature?

A Yes.

Q Okay. Then please continue reading and we'll talk about it.

A Nadji, I'm referring to Dr. Nadji from UM, who read on a second opinion or conclusion, the pathology. February 4, 1999, met CA C/W is consistent with renal cell carcinoma.

Q Okay. Then the next note.

A Next note to the left is check percentage HER2NEU renal cell antigen in RCC.

Q What does that mean?

A That's a note to myself to check the meaning of these markers of renal cell carcinomas.

Q Again, as we found on the prior page, those markers don't give you any information as to whether or not it's a primary lung or kidney.

A No, sir.

Q Correct?

A Yes.

Q Okay. Then it says Monday, 3/30.

A I scratched it and I don't know why I scratched it, and I put Shook, Hardy and Bacon, and below that I put my note for my billing.

Q Okay. It says 9/27, two hour records review.

A Yes.

Q 9/28?

A Literature search, Sridhar markers, records review for three hours.

Q When you say markers, the HER2NEU renal cell antigen?

A Yes.

Q Then 9/28?

A Literature search, metastatic clear cell, review of prior findings.

Q Okay.

A Three hours.

Q On September 28th, you spent six hours working on this file?

A Yes, sir.

Q All the literature that you found and are relying on to any degree is contained on the CD?

A Yes.

Q Let's go to page three.

A September 30th, Shook, Hardy, Bacon meeting, also with Mr. Tom Anderson for two hours. They informed me of the two defendants and

by doing that, they are telling me about the presence of Mr. Tom Anderson, because he belongs to the firm retained by RJR Nabisco.

My comment is meet the expert. Mr. Anderson wanted to meet me.

Q Okay. So we had to meet the expert meeting. Go ahead.

A Mr. Barr, he asked me for a case summary and for my opinion foundation, which I gave to him.

Q Did you give it to him in written form?

A No.

Q Was the meeting recorded in any way?

A No.

Q Videotape, audiotape?

A No, sir.

Q Court reporter?

A No, sir.

Q Go ahead.

A And then I go down, clarification of treatment.

Q Okay. Let me stop you there.

Were your opinions and foundation in the case summary that you just told me about any different than they are now?

A No.

Q Have you ever changed your opinions in this case?

A No, sir.

Q Go ahead.

A Then I go down, 10/98, foot injury, cuboid bone lesion. MRI done at the time, tumor versus infection.

November of 1998, Dr. Temple does a biopsy curettage and Dr. Civantos reads it as undifferentiated carcinoma.

January 6, 1999, left upper lobe lesion read as spiculated. I put Baptist Hospital and I put hilar for hilar lesion, and there is a left lung met, and I'm referring to the lesion that I reviewed with you on the lower lobe of the left lung.

Q Okay. Let's stop there for a moment.

On the January, you have 6, but it's really January 16, 1999.

A It probably is a 16. I'm sorry, it may be January 6th, because I think it belongs to the CT scan done at that date.

Q The CT scan that was done showing the left up lower lobe lesion at Baptist was January

16th.

A Then it's January 16th.

Q Now, in regard to that left lower lobe lesion, you have quotes, spiculated.

A Yes.

Q Do you, in fact, agree or not that the left lower lobe mass was spiculated on the initial CT of the chest?

A The reason I put it in quotation marks is because I'm quoting somebody else.

Q Now, as an oncologist, having reviewed the films, do you agree that the mass identified on the January 16th CT was spiculated?

A No, sir.

Q It was not?

A No, sir.

Q It says Baptist Hospital, hilar, and then it says --

A Left lung met.

Q That was the lower lobe abnormality that was not commented on?

A Yes.

Q Now, having seen all of the information in this case regarding the left lower lobe abnormality, do you have an opinion, more likely

than not, within a reasonable degree of medical probability, whether or not that was scar or left lower lobe metastasis?

A It was a metastasis.

Q Anybody that called it a scar likewise is wrong?

A Yes, sir.

MR. GERAGHTY: Objection to the form.

BY MR. YAFFA:

Q Okay. Let's go ahead and finish the notes, please.

A One, I'm referring to the time of January, 1999. Clear cell CA, Nadji, and then I

put down my exam and treatment, and the first treatment which was given, Taxol and Paraplatin, I put between quotation marks. It was started before clear cell carcinoma diagnosis was made.

Then the progress of treatment. I put down on the right-hand side empyema.

Q Read this.

A GEM SAR. Second line says g-e-m plus NVL. It's actually B, not D, and that's the second line treatment he received.

The next one is TXT, which is taxotere. The next one is Il-2, interleukin-2, and the last

one is thalidomide.

Q Okay. On the right you write empyema?

A Yes.

Q What is that?

A Empyema was the infection on the right pleural that Mr. Allen developed around July of 1999.

Q Okay.

A Next line then says my impression. Just a note to myself. I don't remember who brought it up. It says HPV dash bladder CA.

Q What does that mean?

A If there was association for a viral infection causing bladder carcinoma, or other viral etiology for the bladder carcinoma. If

there was an association of a viral infection with renal cell carcinoma, which is on the next line, which says viral with RCC. Then there is a quotation mark, if it's associated with life-style. These are questions they are asking me.

Q Looking for any other cause other than tobacco.

MR. GERAGHTY: Objection to the form.

BY MR. YAFFA:

Q That's what is happening here, correct?

MR. GERAGHTY: Objection to form.

THE WITNESS: I don't know, sir. I'm just asking the questions -- answering the questions they ask me.

BY MR. YAFFA:

Q They ask you is there a relationship between HPV, which is a virus, and bladder cancer, correct?

A Yes.

Q They ask you whether or not there is a relationship between virus and kidney cancer, correct?

A Yes.

Q What does it say on the first line?

A Viral with renal cell carcinoma.

Q Viral with, or association with his life-style with renal cell carcinoma?

A Yes.
Q Then it says what?
A It says reliance materials. It says the sites.
Q Sites meaning where it's found?
A Yes. I don't know what I meant by RF or RE. RCC is renal cell carcinoma. The risk factor

for renal cell carcinoma.
Then I put Surgeon General, 1987, it says RR, 1.7, and I'm referring to the Surgeon General's report where he describes that kidney cancer has RR of 1.7 with smoking.
Q Meaning that a smoker has an almost two times risk for kidney cancer than a nonsmoker?
MR. GERAGHTY: Objection to the form.
THE WITNESS: Meaning a smoker has 1.7 relative risk over a nonsmoker for kidney cancer.
BY MR. YAFFA:
Q That's why I said approximately 1.7.
MR. GERAGHTY: Objection to form.
THE WITNESS: 1.7.
BY MR. YAFFA:
Q A smoker has a higher risk of kidney cancer than a nonsmoker?
A Yes, sir.
Q Okay. These reliance materials, did you come up with these yourself or was this given to

you by the law firm representing the tobacco industry?

A They were mine.

Q Sites. When you say sites, are you talking about sites regarding risk factor and

renal cell carcinoma and you are going to the Surgeon General's report?

A Yes.

Q Then what does it say?

A Volume four, tab 23, page seven, note on 6/15/96, this is a progress note from his primary care physician, I believe. Says refuses to quit smoking.

Q Again, is that something that you focused on or is that something that the law firm told you they wanted you to focus on?

A I focused on.

Q Again, as to whether or not Mr. Allen refused to quit smoking or was simply unable to do so, you don't know?

A That's what the record stated.

Q Again, my question is whether or not he refused or whether or not he was simply unable to stop, you have no opinion.

MR. GERAGHTY: Objection to the form.

BY MR. YAFFA:

Q Do you have an opinion? If you do, this is my opportunity to find out.

A As far as the facts, I have to go by what the record says and the record says refuses

to quit smoking.

Q Tell me about what the record also shows that wasn't shown to you about his attempts to stop.

MR. GERAGHTY: Objection to the form. I don't know how you can expect him to answer that.

THE WITNESS: I don't know what you mean, sir.

BY MR. YAFFA:

Q Maybe you told him behind the scenes, like when he asked about the association.

MR. GERAGHTY: Move to strike the comment.

BY MR. YAFFA:

Q Did they tell you about the attempt to try cold turkey?

A I don't know what you mean.

Q Did they tell you he attempted to stop smoking cold turkey?

A You mean --

Q Did the law firm that retained your services tell you that this man attempted multiple times to stop cold turkey?

MR. GERAGHTY: Objection to form.

THE WITNESS: I did not see it on the

medical report.
BY MR. YAFFA:
Q That's not my question.
A I'm trying to answer you. They did not tell me that.
MR. GERAGHTY: He's not done yet. The Doctor is not done yet.
THE WITNESS: I'm trying to answer your question. That was not on the medical records and I did not ask about that.
BY MR. YAFFA:
Q Okay.
A They did not tell me.
Q Did they tell you that he attempted to stop using nicotine gum?
A I just told you.
Q Listen to my question. My question is real specific.
Did the lawyers tell you that he attempted to stop using nicotine gum?
A They did not tell me.
Q Did they tell you that there is testimony that he attempted to stop using nicotine patches?
A They did not tell me.

Q Did they tell you that he attempted to stop by going through hypnosis?

A No.

Q Did they tell you that this information is contained in the deposition testimony of his family?

A No.

Q So your comment is that you need to rely what is in the records and is limited strictly to the medical records you reviewed?

A Yes, sir.

Q As to whether or not this man refused to quit or was simply unable to quit, you are unable to comment above and beyond what you already said?

MR. GERAGHTY: Objection to form.

THE WITNESS: Yes, sir.

BY MR. YAFFA:

Q What other opinions do you have about this gentleman and his disease other than what you and I already talked about?

A Can you please be more specific?

Q Sure. I think you and I have covered in great detail the fact that you are of the opinion that he had a primary renal cancer and why,

haven't we?

A Yes, sir.

Q Are there any other bases for your opinion that you believe he had a primary renal cancer, other than what we talked about adnauseam today? Think about that for a second.

Have I adequately covered each and every basis you have for the opinions that you have expressed?

A Yes, sir.

Q Do you have any other opinion about this case or the care that Mr. Allen received that you discussed with these lawyers or they have told you they are going to elicit from you at the time of trial that you and I have not talked about?

A No.

Q Have I adequately covered all of the opinions that you came here today prepared to testify to?

A Yes, sir.

Q Are there any other issues that you discussed with these lawyers about this case that you and I have not yet discussed?

A No.

Q Are you aware of any pathologist who has

reviewed this case locally?

A I don't know who the pathologist that reviewed the case locally is. As a matter of fact, when we were making comments regarding my

role as an expert, it was obvious that the law firm had retained other experts for each one of the aspects of the case. I did not want to know what their opinions were.

Q My question was, are you aware as to whether or not the law firm has retained other local pathologists who have performed recuts of the specimens and performed immunohistochemical stains?

A I don't know whether they are local or not.

Q Do you know whether or not they have had any pathologist perform recuts and do immunohistochemical stains?

A I presume that they have. I know that they have hired other pathologists, but I don't know if they have done recuts and the stains.

Q Has anybody from the law firm that's retained your services advised you of the results of any other immunohistochemical stains that were done other than those done by Dr. Hammer?

A No, sir.

Q Okay. If you give me about three minutes, I'm going to review the materials I have before me. I may very well be done. If I come back and ask you questions, I promise you it's not going to be but to clean up various areas. We are

not going to be here much longer.

A Thank you.

MR. GERAGHTY: I want to advise you Dr. Antunez may be asked questions at trial regarding what risk factors there are for the development of kidney cancer and I think you explored some of that, but I want to put you on notice.

MR. YAFFA: You will be surprised at the one question I was going to ask was regarding risk factors.

MR. GERAGHTY: He may be asked opinions about that subject.

MR. YAFFA: Sure.

BY MR. YAFFA:

Q What risk factors did Mr. Allen have for lung cancer?

A Smoking.

Q What else?

A Alcohol use.

Q Okay.

A I don't know where he lived, so I don't know if he lived in an area of radon exposure or not.

Q The only risk factors that you can point to, to testify now, at the time of your deposition or at the time of trial, that Mr. Allen was exposed to, with regard to lung cancer, was smoking and his alcohol use of one and a half to

two drinks a day?

A Yes, sir.

Q Now, let's talk about his risk factors for kidney cancer.

What risk factors did he have for that?

A Obesity.

Q Anything else?

A No.

Q Wait a minute. Aren't we forgetting smoking?

A No.

Q He didn't have a risk factor of smoking?

A I don't think smoking was a risk factor for his disease.

Q Even though in your own citation it says 1.7, a smoker has 1.7 times the risk factor of a

nonsmoker?

A Yes.

Q That doesn't count for Mr. Allen?

A The Surgeon General --

MR. GERAGHTY: Objection to the form.

THE WITNESS: The Surgeon General that I'm quoting there does not break down the risk for renal cell carcinoma and transitional cell carcinoma of the pelvis in that report.

BY MR. YAFFA:

Q So let's see if I can get this

straight. You are an oncologist testifying locally, retained by the insurance industry or lawyers retained by the insurance industry, it's your opinion that --

MS. FURNESS: Insurance industry?

MR. YAFFA: Did I say insurance?

MS. FURNESS: Wrong case.

MR. YAFFA: Thank you.

BY MR. YAFFA:

Q Getting to the heart of the matter, I'm going to strike the last question, obviously.

You are a hematologist oncologist here today practicing in the State of Florida, locally, in Dade County, retained by the lawyers

representing the tobacco industry and it's your opinion that smoking does not increase the risk of kidney cancer to any degree.

MR. GERAGHTY: Objection to the form of the question.

BY MR. YAFFA:

Q Is that your testimony?

A Your previous questions were related to Mr. Allen. I'm going to answer regarding the current evidence about smoking and renal cell carcinoma. Not all the studies show a positive link between kidney cancer and smoking. Those that show a link show a very weak link for epidemiological studies, and within that link,

when you look for a dose response relationship, the dose response relationship is absent in many of the studies and, therefore, I could not conclude that smoking can be a cause of kidney cancer.

MR. GERAGHTY: Are you finished?

THE WITNESS: Yes.

BY MR. YAFFA:

Q Are you able to tell the jury that smoking is not a cause of kidney cancer?

A Yes, sir.

Q Really?

A Yes, sir.

Q Have you seen any of the studies out there which are cited within many of the journals that you receive in your office, documenting the known association between smoking and kidney cancer?

A Yes, sir.

MR. GERAGHTY: Objection to the form.

BY MR. YAFFA:

Q You disagree with all those?

MR. GERAGHTY: Objection to the form.

THE WITNESS: No, sir.

BY MR. YAFFA:

Q You agree that there is an increased risk for smoking and kidney cancer?

A Yes.

Q You don't think Mr. Allen gets the benefit of that risk.

MR. GERAGHTY: Objection to the form.

THE WITNESS: No, I didn't say that. Your question was whether smoking caused renal cell carcinoma.

BY MR. YAFFA:

Q No.

MR. GERAGHTY: Rephrase your question.

THE WITNESS: Your previous question was whether smoking caused renal cell carcinoma. My answer was very clear. No, and I don't know what causes renal cell carcinoma and I don't know anyone that knows what causes it.

Your subsequent question was if there is a link or if there is an increased risk factor for smoking, and I told you it is reported by the Surgeon General, and what I told you after that is that I do not think that the basis for that report actually supports the conclusion that smoking causes renal cell carcinoma.

BY MR. YAFFA:

Q Do you believe that smoking increases the risk for renal cell carcinoma?

A No.

Q To any degree?

A No.

Q Despite what has been generated by the Surgeon General, that's your opinion?

MR. GERAGHTY: Objection to the form.

THE WITNESS: Yes.

BY MR. YAFFA:

Q Despite what's appeared in all the

medical journals that have come through your office?

A Yes.

MR. GERAGHTY: Same objection.

BY MR. YAFFA:

Q Despite what's printed by the National Institute of Health?

A Yes, sir.

Q Despite what's been authored by the World Health Organization?

A Yes, sir.

Q Despite what exists in the coffers of the tobacco industry's own documents where they relate an increased risk of kidney cancer as a result of smoking, it's your opinion that there is no increased risk?

MR. GERAGHTY: Objection to the form.

THE WITNESS: I don't know.

MR. GERAGHTY: You have to let me finish.

Objection to the form of the question.

THE WITNESS: I don't know what exists in the coffers of the tobacco industry, sir.

BY MR. YAFFA:

Q You will find out.

Have you seen any studies at all that specifically state that seven out of 10 people who are suffering from primary renal cancer have it as a result of smoking?

A I haven't seen a study like that.

Q You haven't?

A No.

Q Did you read Feingold's report?

A Yes.

Q Did you look at it in detail or did you just skim through it?

A It's very dense reading in which Dr. Feingold goes really through one topic to another. I did not really find a report that said that seven out of 10 people that had kidney cancer had it because of smoking. When you look at his references, his references do not support his contention.

Q Have you looked at the reference regarding the seven out of 10 people who have kidney cancer have it as a result of smoking?

A Yes.

Q You looked up that reference?

A Yes. It does not support his

conclusion.

Q Okay. You think he made it up?

MR. GERAGHTY: Objection to the form.

THE WITNESS: I don't know.

BY MR. YAFFA:

Q Do you know Feingold?

A Yes.

Q Do you know Messinger?

A I know of Messinger. I don't know Messinger.

Q Okay. I asked you about the risk factors for lung cancer and you told me smoking and his alcohol. I asked you for his risk factors for kidney cancer and you told me what?

A Obesity.

Q Anything else?

A No.

MR. YAFFA: Doctor, it was a pleasure meeting you. I wish you luck.

THE WITNESS: Thank you very much.

MR. GERAGHTY: We will read.

(Thereupon the taking of the deposition was concluded.)

CERTIFICATE

STATE OF FLORIDA:
: SS.
COUNTY OF DADE:

I, Victor Selvaggi, Jr., being a Certified Shorthand Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I reported in shorthand the deposition of DR. JORGE ANTUNEZ de MAYOLO, that the deponent was first duly sworn by me; that reading and signing of the deposition were not waived by the deponent; and that the foregoing pages, numbered from 1 through 216, inclusive, constitute a true and correct transcription of my shorthand notes of the deposition.

I further certify that I am not of counsel, I am not related to nor employed by an attorney connected to the above-styled cause, nor interested in the outcome thereof.

The foregoing certification does not apply to any reproduction of this transcript by any means unless under the direct control and/or direction of the certifying shorthand reporter.

IN WITNESS WHEREOF I have hereunto affixed my hand this 18th day of December, 2002.

Victor Selvaggi, Jr., CSR,
NOTARY PUBLIC AT LARGE.
MY COMMISSION EXPIRES:
5-10-05

READING AND SIGNING

I have read the above transcript, pages 1 through 216, and I find: (MARK ONE)

( ) The transcript is true, correct, and completely accurate.

( ) The transcript is true, correct, and accurate, except as set forth in my List of Corrections attached hereto, citing page and line and reason for the correction realizing that, for this purpose, I am still under oath.

_____ _____
(DATE) DR. JORGE ANTUNEZ de MAYOLO

Sworn to and subscribed before me this_____day of_____, 2002.

_____
Notary Public

My Commission expires:

TO BE EXECUTED BY THE NOTARY IF THE DEPONENT DOES NOT SIGN:

I hereby certify that a letter with reference to reading and signing deposition was mailed to the witness through his attorney, on _____, 2002, and that the witness

( ) Witness refused to sign, giving the following reason:

( ) Neither the witness nor his attorney has responded to request to read and sign.

_____ _____

(DATE) Notary Public

MY COMMISSION EXPIRES: